Public Utilities

FORTNIGHTLY

Volume XLIII No. 8 April 14, 1949

78

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For Warm Air Furnaces, Steam and Hot Water Boilers and Other Appliances

Public Utilities FORTNIGHTLY

VOLUME XLIII APRIL 14, 1949 NUMBER 8

ARTICLES

FEATURE SECTIONS

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

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PUBLIC UTILITIES FORTNIGHTLY . . is for Federal and state regulation of both privately owned and operated utilities and publicly owned operated utilities, on a fair and nondiscriminatory basis; for nondiscriminatory administration of laws; equitable and nondiscriminatory application; and, in general—for the perpetuation of the free enterprise system. It is an open forum for the free discussion of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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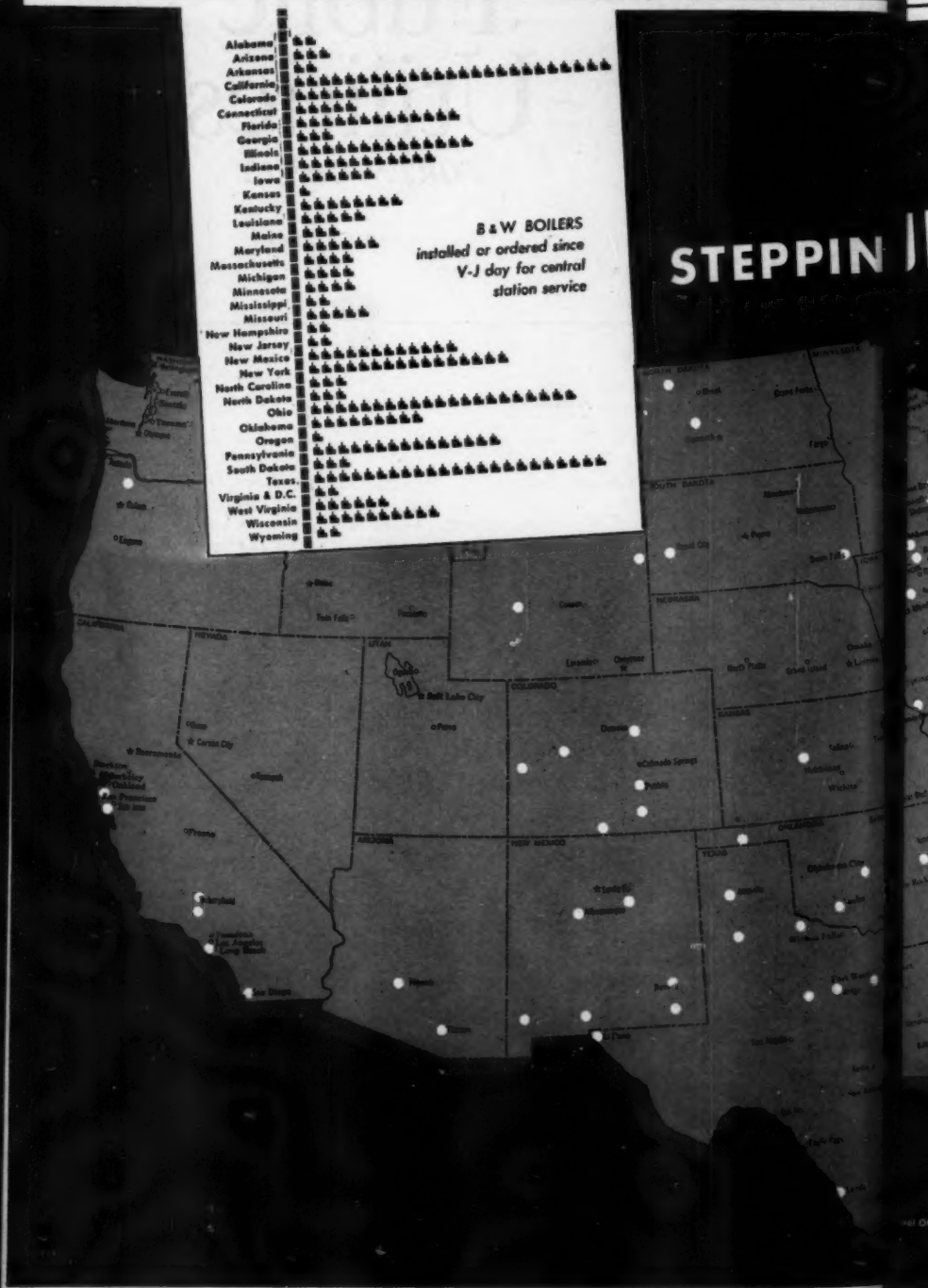


Pages with the Editors

WHEN the 81st Congress started its deliberations last January, there were many predictions and forecasts about congressional approval of one or more new regional power projects organized similar to the Tennessee Valley Authority. When President Truman issued a special statement dealing with the proposed Columbia Valley Authority several weeks ago, it was generally assumed that the main drive would be along this line.

OF course, other valley authorities have their proponents pushing hard in Washington—notably the perennially proposed Missouri Valley Authority and the St. Lawrence seaway-power development. But a cold wind, which has nothing to do with such Federal project development, as such, has struck these blossoming hopes of the Truman administration. Today, few observers are willing to forecast the probability that any of them will find their way to the statute books as a result of final congressional action at this session.

THUS we see, in reverse, the operation of a practical political phenomenon which has worked just the other way in the past. It is simply that Federal power project sentiment has a tendency to become part of an over-all administration program and that its future waxes or shrinks, more or less, in accordance with the way the administration gets along with Congress, generally. TVA, REA, and a number of the other particular Federal power projects already authorized, made their initial progress during the heyday of the early New Deal. Today, with the Truman administration's program under the shadow of a southern Democratic rebellion, new project proposals are finding the going much more difficult.

ONE aspect of the proposed CVA which has complicated its progress is the lack of a united demand for the same in the areas to be affected. A good many people in the Pacific Northwest just do not want to have a Federal valley authority. The opening article in this issue is a discussion of this situation by TOM HUMPHREY, associate editor of the *Oregon Journal*. MR. HUMPHREY started out early in his journalistic career with the *Fresno* (California) *Morning Republican*. He was also formerly an editor and co-publisher of daily newspapers at Oregon City, Oregon, and Hanford, California. He has been an editor and feature writer for the *Oregon Journal* for the past seven years, specializing in power, taxes, state government, etc.

TOM HUMPHREY

* * * *

THERE seems to be mounting evidence that we are becoming a nation of fatalists as far as Federal government spending is concerned. The primary fuss behind the upward pressure on prices is the huge Federal spending program which is running at the annual rate of about $44 billion. The number of Federal employees has grown from 500,000 to 2,200,000 since 1933. And former President Hoover warns us that they are not all in Washington. "Ninety per cent of them are out in the sticks endeavoring,

under direction from Washington, to improve the lot of the citizen whether he likes it or not." Americans for a century and a half supported their government, kept it out of their affairs, and so became the earth's richest people. Now, more and more, we ask the government to support us.

WHO thinks up these ideas, and what is their purpose? In this issue we present a thoughtful warning by a prominent utility executive on the need for "pest control" to avoid an economic plague which could well afflict us as the result of what might be called "bubonic budgets." LANE D. WEBBER, vice president of Southern California Edison Company, author of this article beginning on page 470, bases his message on a study made by the National Association of Manufacturers' committee on government spending. MR. WEBBER, who was chairman of this committee, characterized proposed reductions in the Federal budget as a possible factor and objective.

* * * *

THE series of Hoover Commission reports on reorganizing executive agencies is almost completed. The report on reorganization of regulatory agencies has stirred up at least one interesting reaction by a former government official who has made his career largely in the field of regulation. HARRY R. BOOTH, whose article entitled "Do We Need Separate U. S. Radio and Utility Commissions?" begins on page 479, is now engaged in private law practice in Washington, D. C. MR. BOOTH was formerly an assistant attorney general of Illinois who represented the Illinois Commerce Commission. During the war he was first utilities counsel for the Office of Production Management and later chief of the utilities division of the Office of Price Administration.

HARRY R. BOOTH

* * * *

THE article on "Transport Problems in Western Europe," which begins on page 488, comes from a well-known expert on international transport, BRIGADIER GENERAL SIR H. OSBORNE MANCE. After specializing on railways during his military service in the Royal Engineers, including the South African War and railway construction in Nigeria, he became Director of Railways and Roads at Britain's War Office 1916-20. During the Paris Peace Conference following World War I, he was transport adviser to the British Delegation. He resigned from the Army in 1924 to become technical adviser to the Ottoman Bank. He was British member of the German Railway Board from 1925 to 1930, and made reports on the Austrian railways in 1933 and East Africa transport in 1936. SIR OSBORNE is now British delegate on the Central Rhine Commission and British member of the Transport and Communications Commission of the United Nations.

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Missouri commission considers the investment cost of a telephone company at a specific date to be a reliable basis for considering a proposed increase in rates. (See page 81.)

THE next number of this magazine will be out April 28th.

The Editors

Coming IN THE NEXT ISSUE

★

YOU CAN HELP BUILD A NEW MARKET FOR EQUITIES

Is government financing to become a substitute for private capital in expanding the economic system of the nation? Floyd L. Carlisle, Jr., gives us an arresting insight on the need for more determined effort on the part of industry to attract flow of new capital from a generation of our citizens who are in danger of becoming unfamiliar with productive channels for their investment.

FRINGE PARKING AID IN SOLVING TRAFFIC JAMS

More and more growing American cities are finding it necessary to try new methods for programs to keep rush-hour traffic moving through downtown streets that were never meant to handle such traffic volumes. David Markstein, New Orleans writer of business articles, has made a round-up survey of certain transit companies participating in so-called fringe parking lots—as an aid to not only traffic generally but transit schedules and transit revenue.

WHY NOT STATES' RIGHTS FOR THE COLUMBIA VALLEY?

There has been reaction in the Columbia valley states to publicity, largely coming out of Washington, D. C., on desirability of establishing a Columbia Valley Authority. Daniel B. Noble, associated with local interests in that area, gives some reasons why many folks in the Columbia valley are taking a second look at the importance of states' rights in face of federalized development.

THE COMPENSATION OF PUBLIC UTILITY COMMISSIONERS

Public utility commissioners have to raise families, pay rent, and fight the tide of high living costs just like every other American during the recent trend towards inflationary prices. Ray Garrett, Jr., has made a statistical analysis of adjustments that have been made in each state in the compensation of utility commissioners since before the start of World War II.

★

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.***

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDWARD V. RICKENBACKER
President and general manager, Eastern Air Lines.

"I believe in free enterprise . . . for only through free enterprise can we attain the pride of workmanship so necessary for development."

LESTER MARKEL
Sunday editor, The New York Times.

"The good newspaper is a chapter of world history and it should be read in the light of what has gone before and what is likely to come after."

ARTHUR VANDENBERG
U. S. Senator from Michigan.

"I waste no time on recent accidents. Our need is to work in the vineyard; not to sob at the wailing wall. . . . I hope we recall that heaven helps those who help themselves."

ALBERT EINSTEIN
Scientist.

"Any power must be the enemy of mankind which enslaves the individual by terror and force. . . . All that is valuable in human society depends upon the opportunity for development accorded to the individual."

KENNETH S. WHERRY
U. S. Senator from Nebraska.

"If business is to tolerate the imposition of controls, allocations, regimentation, and other police state methods, and submits without protest or effective resistance, then that kind of a program is exactly what you are going to get."

JOHN A. KROUT
Director of general studies, Columbia University.

"Freedom through the ages has been an inspiring word and freedom itself is a glorious thing. It is worth your while and mine to talk about freedom. If you don't talk about freedom, you won't have it to pass on to the next generations."

LEONARD W. TRESTER
Chairman, advertising committee, Chamber of Commerce of the United States.

"[Management must] find more adequate means of sharing with our coworkers the adventure, the challenge, the excitement, and the creative experience we find in our daily tasks . . . (and) a sense of participation and a feeling of significance."

MORRIS SAYRE
Chairman, National Association of Manufacturers.

"Expenditures and tax demands must be reduced so that money for productive enterprise will get into productive channels instead of supporting nonproductive bureaucratic payrolls. Taxes have taken so much that industry today is $185 billion short in new plants, new machines, new tools, and new processes."

HERBERT L. CARPENTER
Director, Commerce and Industry Association.

"Where in 1932 the per capita cost for Federal expenditures was $37.41, today it is $282.82. There is a steady stream flowing out of Treasury coffers at the rate of $80,000 a minute."

HOLGAR J. JOHNSON
President, Institute of Life Insurance.

"People and their interests must be put before the efficiency of machines, techniques, output, or mere personal gain. And this must be considered on more than a dollars-and-cents basis."

RAY R. EPPERT
Vice president, Burroughs Adding Machine Company.

"The greatest danger that can exist in any business is an inclination on the part of top executives to make impulsive decisions without looking at the record, or, if they look at it, failure to understand the significance of the facts disclosed."

EDITORIAL STATEMENT
The Wall Street Journal.

"The only way to cut government spending, and hence taxes, is to root out the bramblebush of bureaus and agencies. Unnecessary functions must be eliminated, however pleasant they may be for jobholders and special groups. There is no easy way, as any householder knows, to economy."

CLARENCE FRANCIS
Chairman, General Foods Corporation.

"The time for coöperation between business and government on all levels—local, national, and world-wide—is not tomorrow, but now. . . . When industry demonstrates that it is working for all people, it can convince the public that it can do many of the things now done by government at a lower cost."

EDITORIAL STATEMENT
"The Exciter," published by Central Maine Power Company.

"An integral part of the 'American Way of Life,' our stockholders are not the plutocratic vampires usually portrayed by the supporters of totalitarian forms of government. They are merely everyday Americans who are entrusting us with the tools with which to make a living in return for a moderate rental for those tools."

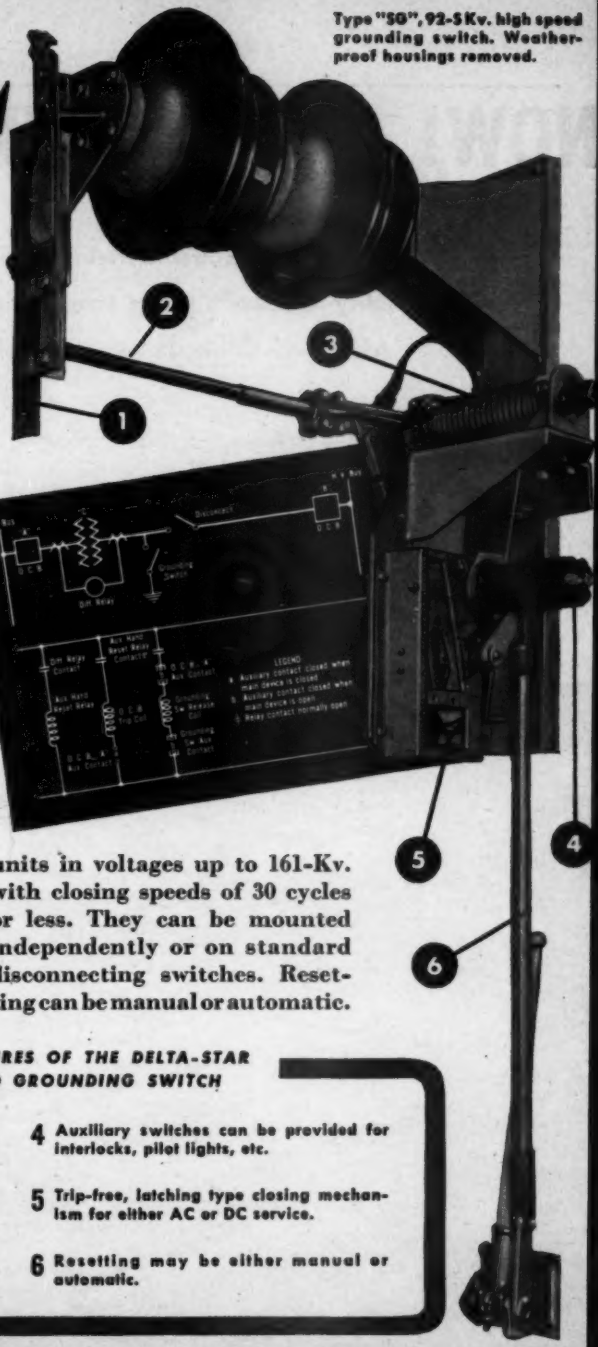
S. C. ALLYN
President, National Cash Register Company.

"To be efficient and productive are not enough. Industry must have an awareness of human and social problems and deal with them realistically. The plain truth is that, despite the millions spent on advertising and public relations, industry has not sold itself adequately to the public. It has had and continues to have a bad press."

HENRY FORD II
President, Ford Motor Company.

"I am very much against an educational system that depends entirely on the state with a capital S—that is centralized under government control or supervision. I am against it because I don't think it would be any good. It would suffer from the fault of every monopoly. It would grow fat and unimaginative. It would continually take the easy way. But worse than that, it would tend to teach the views of the government in power."

RANSFORMER
AULT
ROTECTION
OR LESS!



Type "SG", 92-S Kv. high speed grounding switch. Weather-proof housings removed.

elta-Star "SG" high-speed ng switches. They offer a low ans of transformer protection, in ases replacing more costly cir-kers or pilot wire schemes.

y system layouts are such circuit breaker at the far line can be used for iso-transformer bank when e occurs. This method requires the use of an ve pilot wire or carrier to transmit the tripping e to the remote breaker. rately grounding of the the transformer offers a ost means of tripping re-breakers. A conventional necting switch can be in-for isolation of the trans-to permit restoration of e.

e grounding switches are le as single or multi-pole units in voltages up to 161-Kv. with closing speeds of 30 cycles or less. They can be mounted independently or on standard disconnecting switches. Resetting can be manual or automatic.

OUTSTANDING FEATURES OF THE DELTA-STAR "SG" HIGH-SPEED GROUNDING SWITCH

1. High pressure contacts. Inertia type shock absorber reduces shock to insulator and blade.
2. Light weight, reinforced blade is of ample thermal capacity to withstand short circuits.
3. Switch blade is coupled directly to spring mechanism for maximum efficiency.
4. Auxiliary switches can be provided for interlocks, pilot lights, etc.
5. Trip-free, latching type closing mechanism for either AC or DC service.
6. Resetting may be either manual or automatic.

LTA-STAR ELECTRIC COMPANY

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Denver, Colo. Norfolk, Va.
Detroit, Mich. Philadelphia, Pa.

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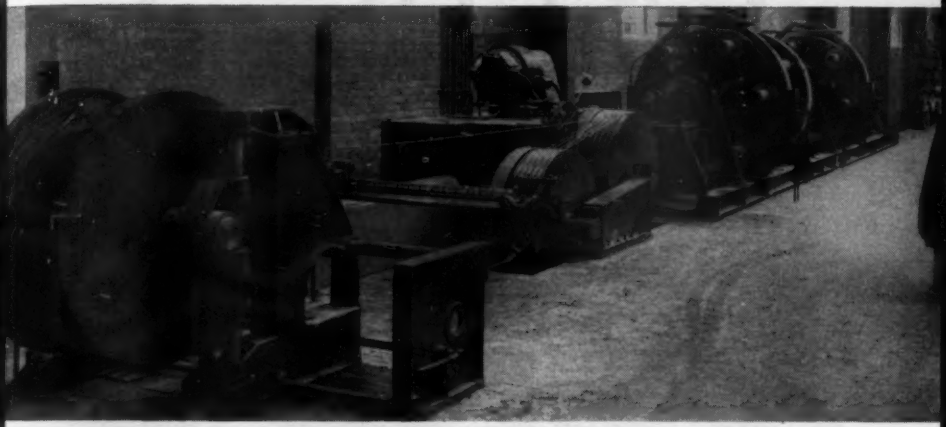

NEW EQUIPMENT now being installed will give Permanente Metals' Newark, Ohio, plant wire and cable production facilities that are unsurpassed by any in the nation.

Permanente Metals

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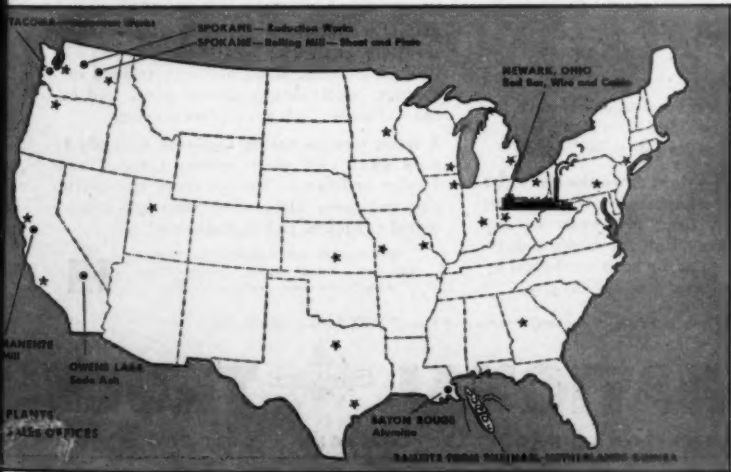

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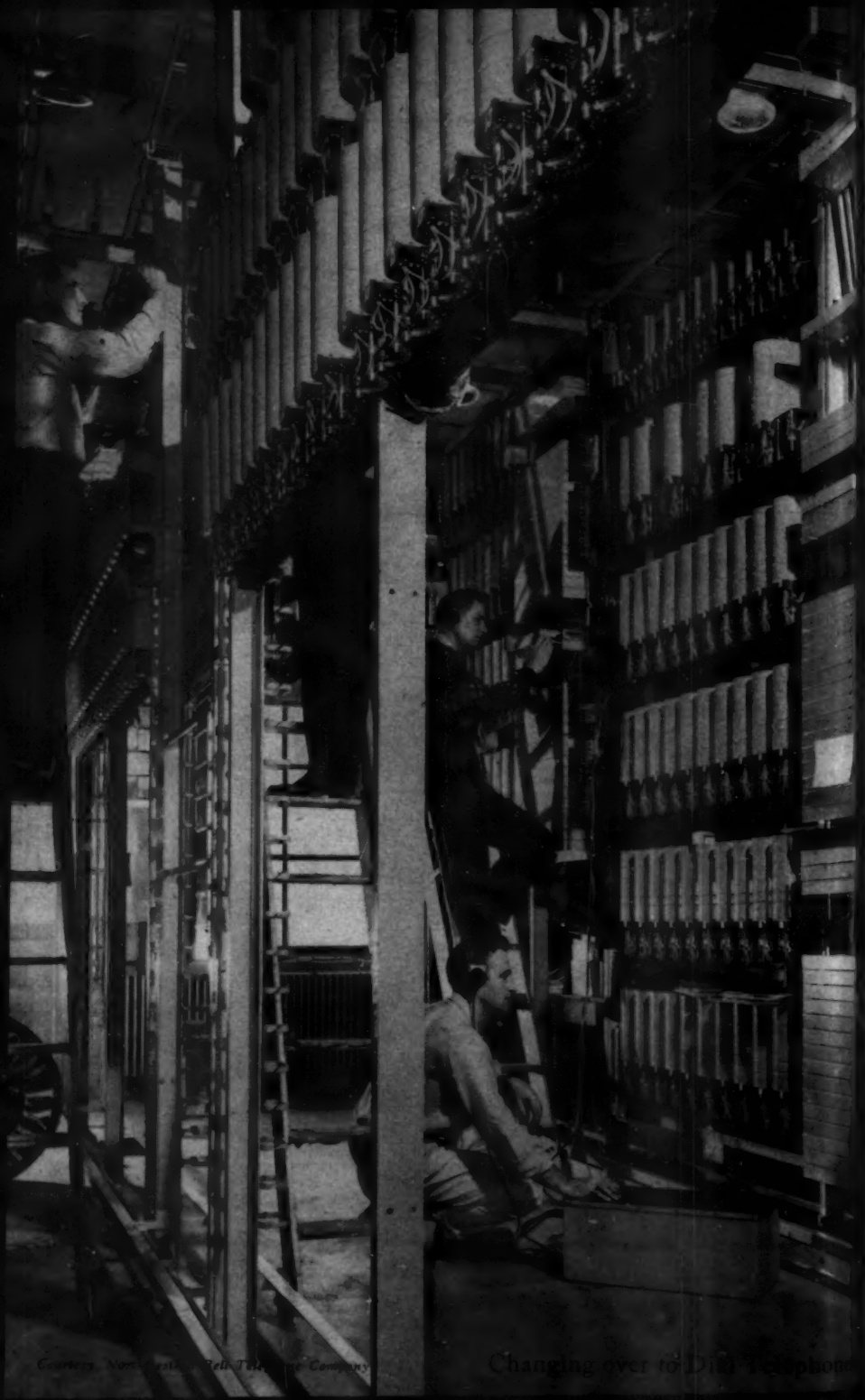
MANENTE METALS' completely integrated produc- facilities assure you of a dependable supply of Kaiser Aluminum Cable. Twenty-one conveniently located sales offices provide prompt service.

Utilities Almanack

April

14	Th	¶ *National Association of Corrosion Engineers ends annual conference and exhibition, Cincinnati, Ohio, 1949.*
15	F	¶ *Southeastern Electric Exchange ends annual conference, Boca Raton, Fla., 1949.* ¶ *Western Metal Congress and Exposition ends, Los Angeles, Cal., 1949.*
16	Sa	¶ *Tennessee Valley Public Power Association ends annual convention, Memphis, Tenn., 1949.*
17	S	¶ *American Water Works Association, New York Section, will hold annual meeting, Elmira, N. Y., Apr. 28, 29, 1949.*
18	M	¶ *Midwest Power Conference begins Chicago, Ill., 1949.*
19	Tu	¶ *American Institute of Electrical Engineers, Southwest District, begins meeting, Dallas, Tex., 1949.*
20	W	¶ *Nebraska Telephone Association ends annual convention, Lincoln, Neb., 1949.* ¶ *Southern Gas Association ends annual convention, Biloxi, Miss., 1949.*
21	Th	¶ *Rocky Mountain Electrical League begins annual spring conference, Cheyenne, Wyo., 1949.*
22	F	¶ *Maryland Utilities Association begins one-day convention, Baltimore, Md., 1949.* ¶ *American Water Works Assn., Nebraska Section, ends meeting, Lincoln, Neb., 1949.*
23	Sa	¶ *American Society of Newspaper Editors ends meeting, Washington, D. C., 1949.* ¶ *Industrial Marketing Association ends meeting, Washington, D. C., 1949.*
24	S	¶ *American Water Works Association, Canadian Section, begins annual meeting, Quebec City, Quebec, Canada, 1949.*
25	M	¶ *All-Canada Radio Facilities begins annual meeting for production and sales managers of mutually operated stations, Regina, Saskatchewan, Canada, 1949.*
26	Tu	¶ *American Wood Preservers Association begins 3-day annual conference, St. Louis, Mo., 1949.*
27	W	¶ *Illinois Telephone Association begins annual convention, Peoria, Ill., 1949.*



Courtesy, New England Tel. Tel. Co.

Changing over to Dial Telephone

Public Utilities
FORTNIGHTLY

VOL. XLIII, No. 8 APRIL 14, 1949

The Northwest Power Puzzle

Charges of Federalism, Socialism, private monopolies, and home-rule politics are being tossed around in the wake of President Truman's recent request for congressional legislation setting up a Columbia Valley Authority. Here is an on-the-spot analysis of the various contentions involved in the northwest power problem.

BY TOM HUMPHREY*

PRESIDENT Truman will get no argument out of residents of the Pacific Northwest when he says "we must push forward with the development of our rivers for power, irrigation, navigation, and flood control." He's talking the language of the whole region.

Nor will he get any argument when he says the power shortage in Columbia basin is "critical" and that basin-wide development of land and water resources is imperative. Everyone—Congressmen, newspapers, public and private power agencies, chambers of commerce, and labor-management groups—agrees 100 per cent.

But when the President says that "we should apply the lessons of our Tennessee valley experience to our other great river basins" and instructs a 5-agency committee to come up with a Columbia Valley Authority bill he will find plenty of argument in the Pacific Northwest, as well as in the Congress — particularly if he means that he favors a TVA or authorization type of development for Columbia basin.

*For personal note, see "Pages with the Editors."

When Mr. Truman made his surprising CVA declaration—after indicating previously that he favored the development of the Missouri valley through existing agencies and had said that development of river valleys "is a matter for the people to decide"—he certainly started something.

Valley authority proponents bounced up all over the place. They rallied 'round Representative (former Senator) Hugh Mitchell of Washington who has tried for years to put across a CVA. They said, in effect, that this region could get more Federal money if it had a CVA; that there would be no power shortage if it had a CVA; that the 1948 flood would not have hit the basin if it had a CVA.

Public power-minded grange masters of Oregon and Washington began once more to beat the valley authority drums. Several labor leaders got aboard. Representatives Mitchell and Jackson, Democrats, of Washington, and Senator Taylor of Idaho, radical third party running mate of Henry Wallace, couldn't wait for Mr. Truman's 5-agency committee to report. They were for tossing their own CVA bills into the congressional hopper. And Senator Murray, Democrat, of Montana, said he was going to make another pitch for his Missouri Valley Authority bill.

FINALLY, Bonneville Power Administrator Paul Raver, strong advocate of coördinated development of Columbia basin but lukewarm advocate of a CVA, went to Washington, D. C., talked to his boss, Secretary of Interior Krug (former power manager for TVA), then came out "wholeheartedly" in favor of a regional agency "in the nature of a CVA."

But that was only half the story—a noisy half, true, but only half.

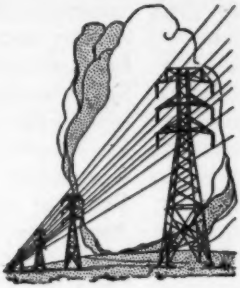
Governor Douglas McKay of Oregon came out with a strong opposition statement. "What's the matter with the way we're doing now?" he demanded.

"I cannot agree with any plan for a Columbia Valley Authority under which the states surrender their autonomy and our natural resources pass into complete control of Federal bureaus," he wired President Truman. Governor McKay told the President that he could do a great service to the region if he permitted the U. S. Army Engineers to complete development of the power, navigation, and flood-control projects outlined in their master control plan for the Columbia and its tributaries.

Governor C. A. Robins of Idaho said: "On the basis of past performance, of knowledge, both special and general of the entire area, it is my belief that existing agencies can best develop the Columbia basin. Authority development and control, I believe, would invade the area of sovereign rights of the states."

Governor Arthur B. Langlie of Washington started his own backfire against CVA by sponsoring a Senate bill giving the state authority to go into the power business at the wholesale level. He declared it would protect the state against the "overpaternalistic interest of Federal government."

Governor Langlie also warned that "if the people of the state don't run their own power business today, the Federal government is going to come in and do it for them and we are not going to have local control; control of our resources and economy will come from Washington, D. C."



Top States in Rural Electrification

"OREGON, Washington, and Idaho are among the top eight states in rural electrification, without TVA, while Tennessee is forty-fourth. This region has cheaper power than TVA, the domestic rate in Portland under private company operation averaging 1.28 cents per kilowatt hour; the average rate under TVA being 1.57 cents."

GOVERNOR Vail Pittman, Democrat, of Nevada and Governor A. G. Crane of Wyoming, parts of whose states would be in the proposed 279,000 square mile Columbia Valley Authority area, also oppose it. That makes five out of the seven governors on record against a valley authority. Governor J. Bracken Lee of Utah is expected to clarify his position soon and Governor John Bonner of Montana ran on a platform of "Montana water for Montana people." Former Governor Ford of Montana was a strong opponent of both CVA and MVA, being a leader in the Missouri Basin Inter-Agency Committee which, like the Columbia Basin Interagency Committee, works for basin development on a coördinated interagency, Federal-state basis. That isn't all. Heads of the three outstanding municipal power agencies of Oregon and Washington oppose CVA.

J. Frank Ward, superintendent of Tacoma City Light, says: "Coördination is desirable, but not so desirable that the people of the Northwest can afford to lose control of the development in their own area. I feel that will be the inevitable tendency of a larger authority."

E. R. Hoffman, superintendent of Seattle City Light, says: "I think satisfactory progress could be made in the development of power on the Columbia river by existing agencies." And R. R. Boals, general superintendent of the Eugene (Oregon) water and power board, says: "I very much object to a Columbia basin authority or to any other authority so far proposed."

OREGON Congressmen are almost unanimously opposed to a TVA-type CVA. Senator Guy Cordon, who has waged a successful drive for funds

for McNary dam and other Army Engineer projects, strongly opposes CVA. Senator Wayne Morse, progressive Republican, says: "I am anything but convinced that we in the Pacific Northwest want any government agencies in control of our rivers based upon the Tennessee valley pattern. Our economy is very much different and our people are strong believers in a maximum of local self-government."

Representative Lowell Stockman actively battles a TVA on the Columbia. Representative Harris Ellsworth indicates he will introduce an alternate bill, but his newspaper, the *Roseburg News-Review,* is campaigning against TVA. Senator Cain of Washington and Representative Angell of Oregon are withholding comment until they see the final draft of the proposed CVA bill. So is Senator Miller of Idaho, but he is on record against the river authority idea. Senator Ecton of Montana is as strong against CVA or MVA as Senator Murray is for them.

Every major newspaper and more than 85 per cent of all newspapers of Oregon, Washington, and Idaho oppose CVA. Every power company president is actively antagonistic, remembering, no doubt, that TVA has elbowed 32 privately owned electric utilities out of the picture, either in whole or in part, in the Tennessee valley. Every major chamber of commerce is on record against CVA, including Portland, Seattle, and Spokane, recalling that TVA engages in 30 different business enterprises in competition with private industry.

And while Oregon and Washington state grange leaders are plugging CVA for all they're worth, other farm groups are adamant in their opposition. Among them are the Oregon State Farm Bureau Federation, the Idaho State Grange, the Washington and Idaho State Reclamation associations, the Western Montana Fish and Game Association, the Wyoming State Planning and Water Conservation Board, the Conference of Northwest Reclamation Associations, the Wyoming Stock Growers Association, the Yakima Valley Farm Council, the Columbia River Basin Resources Commission, the Northwest Mining Association, the Western Forest and Conservation Association, the Washington and Idaho State Cattlemen's associations, just to name a few. They declare in forthright resolutions and statements that they want no superstate to threaten their state, water, and mineral rights or to supersede existing Federal agencies such as the Army Engineers, Bureau of Reclamation, and the soil conservation and forest services with which they have dealt satisfactorily for years and which are susceptible to local demands.

The Pacific Northwest Development Association says there are almost 100 agricultural, industrial, and promotional organizations on record against a Columbia Valley Authority. Even the tribal council of the Warm Springs Indian Reservation of Oregon is against TVA.

The reasons are obvious.

The Pacific Northwest is one of the most progressive and prosperous regions in the United States, in marked contrast with Tennessee valley states. It has the highest per capita income; TVA states have only

60 per cent of the national average, despite fifteen years of TVA. Oregon, Washington, and Idaho are among the top eight states in rural electrification, without TVA, while Tennessee is forty-fourth. This region has cheaper power than TVA, the domestic rate in Portland under private company operation averaging 1.28 cents per kilowatt hour; the average rate under TVA being 1.57 cents.

The Pacific Northwest is short of power, all right. The fastest growing region in America, it needs at least 6,000,000 kilowatts more power in the next ten years. But TVA is short of power, too. In fact, it has stirred up a national controversy by asking the Congress for a $50,000,000 steam plant. Imagine that, in a so-called hydroelectric heaven!

The difference is that most people of the Pacific Northwest believe that the Army Engineers, the Columbia Basin Interagency Committee, and the U. S. Bureau of Reclamation have done and can do a better river development job than TVA has done for Tennessee valley, despite the expenditure of $1 billion. And the record sustains them.

All this and freedom, too.

U. S. Near "Point No Return"?

"NEVER *has a nation recovered itself, once the leaders have lured the people far into the grip of socialistic power. You can call the roll as far back as history reaches. Countries go on down to catastrophe as Germany and Italy have gone, as Rome went, and as Russia will go.*

"Americans for a century and a half supported their government, kept it well out of their affairs, and so became the earth's richest people. Now more and more we ask the government to support us.

"Government offers more 'help' for agriculture, housing, education, health, and other things. Everybody is encouraged to ask for something. Every government aid means more taxes and more regulation. Each new experiment fastens onto the people a new load, and the load remains.

"When a flier risks stormy weather over the ocean, he approaches what airmen call 'point no return.' Beyond that he cannot return to safety. He must take his chance on getting through.

"How near is the U. S. A. to Point No Return?"

—EDITORIAL STATEMENT,
Farm Journal.

Bubonic Budgets

Since our utility industries stand in the front line of those American institutions subject to the encroachment of foreign social doctrines, this utility leader feels constrained to make a straight-from-the-shoulder appeal to common-sense precautions on combatting the spread of menacing ideological infection from foreign shores. How much anti-contamination surgery must be performed on our government budgets, to cut out the poison? How can the operation be sold to the American people? Such are the serious questions posed by this author who combines his utility experience with knowledge of political history at home and abroad.

By LANE D. WEBBER
VICE PRESIDENT, SOUTHERN CALIFORNIA EDISON COMPANY*

HIGH in the horrors of history ranks the bubonic plague, too occasionally visited upon careless, populous areas permitting the multiplication of rodents that contract and become infected with the dread disease. It is communicated to humans by one of our tiniest but most agile insects — the flea — which, through its bite, transmits the germ that inoculates the "bitee." It causes and is identified by a swelling of the lymphatic glands, charged with the job of absorbing such poison, and trying but failing therein.

It is usually fatal—as a human ailment, it rates unusually high in mortality. Once started it quickly becomes epidemic. Historic treatment has been mass exodus from the affected area and abandonment of the afflicted. Although more frequent in the overbred portions of the Orient, it almost devastated London in 1665. Following the ravages of its course, the survivors return, belatedly eradicate the remaining rodents, and again begin their pursuit of human caprice. Sensible, scientific consideration could have avoided the disaster by earlier rodent control and elimination—simple preventative measures.

The word "lymphatic" is defined as phlegmatic or sluggish, and has been assigned medically to parts of the human body — protecting glands — whose failure to function destroys the complicated fabrication of which they are a seemingly insignificant part.

HOW comparable to the body politic whose units are individuals. These human individuals are the glands of the over-all organization—government — which shall determine their freedom, prosperity, and happi-

*For additional personal note, see "Pages with the Editors."

ness or their enslavement, poverty, and misery. If they shall be sluggish in the performance of their functions, a plague will destroy their joint creation and themselves.

To demonstrate the analogy, please recognize that government—free government — is the people themselves, acting in their composite personality. To function it must obtain and employ those funds necessary to its operation. It can raise revenue solely through taxation—because it has no other source. The people must provide their national expression with the moneys required for its performance of their will. Never forget that they, acting through freely and secretly chosen representatives, govern themselves — determine and dictate the kind and extent of government they want. Thus they fix expenditures and tax themselves.

Now, there are doubtless certain human "carriers" who infect themselves with the philosophy of the "isms"; that government can and should do all things for all people; that the individual is not a free human being, but just a thing of the state; that, notwithstanding our attainment of world-envied abundance and contentment thereby, individual enterprise is wrong or has failed; that Socialism, Collectivism, or Communism promises something better, justifying abandonment of the here obvious exemplification of individualism for the elsewhere and everywhere discredited procedures of Collectivism. These create the source of contamination. If the fellow-traveling "contacts" of these "carriers" bite the selfish, thoughtless, thriftless members of society and pressure groups, we witness the resultant establishment of whole colonies of ideological germs so menacing to our citizen sovereignty. If enough of these "contacts" (and one is enough) bite enough of our citizens, the remaining units or glands of our body politic cannot absorb the poison—particularly if they are sluggish. An epidemic impends.

THE people are easily intrigued with the thought they should have all they can get, that they have not enough, and that government can give it to them — "for free." After long years of propaganda to the effect: that they are deprived of their share by a malicious few who exploit them; that they need not exert themselves in and for the greater production of their necessities, comforts, and luxuries; that they need only give power—and more power—to the demagogues who fashioned the false propaganda, they are highly susceptible to this type of infection.

Hence, the epidemic of government spending for paternalism, resulting in bureaucracy — the bubble of bubonic budgets and the swelling which no glands could absorb.

What is more we cannot run away from this plague of spending, taxation, and inflation. There is no place of refuge, because most of the rest of the world is already afflicted—caught in the contagion and the chaos so produced. No, we must fight it out—win or lose—right here.

Let's evaluate the philosophy, purpose, and plunder of those who would destroy us and undertake their political eradication—now, not after the plague shall have taken its toll. Let's find and apply the antidote *before* the poison takes its fatal hold and "ism" *rigor mortis* sets in.

Most of these real human "carriers" were produced in alien lands, where misery and slavery may have been the lot of their teachers or progenitors. There they were fed and matured upon hatred and those whom they, rightly or wrongly, blamed for their poverty and tragedy. Discharging themselves from all responsibility for their fate, their pet hate is authority or government, which, in fanatical delusion, they build into the implement of their torment, the instrument of their alleged tormentors. In their minds, government becomes their archenemy. As fugitives or refugees, even in the land of the greatest liberty, and freedom from the fictions of distorted mentality, many cannot free themselves from the inbred hatreds. Looking upon the prevailing system of government as their eternal foe they plot its ruin.

THE technique is simple enough. They have but to seek out the malcontents and dissidents. They consort with them; exaggerate the ills of their victims. They repeat the dirge of their own allergy — a requiem of wrongs — and win recruits to their purpose. Those whom they cannot convince completely they confuse and bewilder with the dramatization of imaginary injustices and the glorification of promised "pie in the sky."

There are relatively few of these arch infectors. But they attract many followers. They deceive by hiding under the camouflage of respectable association. The same political candidate who raves at the direct import of foreign infection often flirts with the fellow-traveling "contacts" — because they are great in number, activity, and votes—*and they always vote.* Altogether, these are less in number than the people, but so much more active and purposeful.

Their objective being a sort of anarchy, the overthrow of government—free government—or its subjection to their control, they search out its source of existence and find that to be individualism, industrialism, Capitalism. Each owner of a modest home, farm, life insurance policy, bank account, bond, share of stock, automobile, job or small business venture, is a Capitalist, therefore their enemy to the proposed revolution.

How then shall they destroy such government? By the destruction of its source: Individualism by baiting the individual to become a pawn of the state; industrialism by government ownership and operation of all industry—abolishing private ownership of property; Capitalism by the destruction of capital. Then in common poverty and misery—upon which it feeds

¶ "FOR *the first ten years [of the present century] Federal expenditures averaged $575,000,000 — half a billion. In the teen-age decade—which witnessed World War I—that average was $3.8 billion. During the twenties—notwithstanding some $10 billion of debt reduction—the average was $3.7 billion. Throughout the thirties—with its depression—$6.2+ billion. The forties—cursed with World War II hit the jackpot with $51.7 billion.*"

—Socialism takes over. Such are the plot and the poison.

THE government of a vigorous and virile people is not so easily destroyed—when it is their own free government. Nor is the economy that provides for them the greatest abundance of the good things of life throughout all history easily destroyed. Nor is individual liberty, when realized and prized. Yet all can be destroyed and lost, unless properly appraised and continually rewon by the eternal vigilance that is their price.

The attack upon such a citadel must be planned and executed. The victims must be deceived with promises of greater abundance and freedom. So, on the one hand, must small grievances be magnified and, on the other, false promises exaggerated. Demands from government must be increased—requiring increased spending and taxing—unearned higher wages and unjustified lower prices from all industry—exhausting its source of maintenance and replenishment. That is the "ism" pattern.

They would destroy free government by spending and taxing it—the people—into insolvency and Socialism — free-private-competitive-enterprise, or Capitalism, by the exhaustion of capital in taxation and inflation.

Throughout all civilized history, of which reliable records exist, there have been sporadic uprisings or epidemics of such "isms." In recent modern times, beginning with the Nineteenth Century, the strongest early advocate thereof was the "Iron Chancellor," Bismarck, who — compromising with and ensnaring the Socialists—employed some of their techniques to make automatons or robots of the German people—completely subject to the will of their master. He first used "Social Security" as bait. Welded into a "one-man" controlled existence, Germany became, apparently but abortively, a powerful nation of political mechanism — Frankensteins — twice, and finally was led to ruin through the ruthless ambition of his successors.

THEN followed Russia, Italy, and Spain in the world wars. Fifteen nations, including the satellites of Russia, now writhe in the throes of "isms" — France paralyzed in the present struggle and "Old England" following suit. The Scandinavian countries have long experimented with parts of the philosophy, to their serious detriment. China, India, Korea, and the Malay States are sinking into the morass. Greece, Turkey, Egypt, and all of the Near East stand at the brink.

This affected area encompasses the larger part of the land mass of the earth and all or much of five of the former seven World Powers. Japan is presently sterilized, leaving the United States of America the sole surviving great nation to champion individual liberty, initiative, incentive, opportunity, and free government.

That is the world situation. What of our own?

The present and recent powers of supervision, regimentation, and control of our business and private lives, as held and exercised by centralized Federal government, stand at hand for ready example. Almost every act of business must run the gauntlet, if not the gamut, of some such supervision. The threat of another war suggests the multiplication and, perhaps, perma-

Peak of Spending

"THE war year 1945 marked the peak of spending, with a budget in excess of $100 billion—more than this nation had spent from the inauguration of President Washington to the administration of President Hoover, 140 years burdened with four conflicts—the War of 1812, Civil War, the Spanish American War, and World War I."

nent infliction upon us of such powers and restrictions.

These powers require, feed upon, and multiply like amoebae under, government spending. Thus does such spending have sinister significance.

But to get to the bubonic budgets. With that truly epitomized preface, let us speak of spending. A review of the present century—almost half gone—discloses startling statistics.

For the first ten years Federal expenditures averaged $575,000,000—half a billion. In the teen-age decade—which witnessed World War I—that average was $3.8 billion. During the twenties — notwithstanding some $10 billion of debt reduction—the average was $3.7 billion. Throughout the thirties—with its depression—$6.2+ billion. The forties — cursed with World War II—hit the jack pot with $51.7 billion. For the postwar years—1946 through 1949, and using the current budget for the latter year ending June 30th next—the average will be $48 billion—80 times that of the first decade, 12 times that of the second, and 7 times that of the thirties.

DURING the fiscal years 1933 through 1949 our Federal government will have collected in taxes $295 billion and have expended at least $525 billion.

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Suppose we superimpose the fiscal record of the current year over that of 1933.

In 1933 Federal expenditures were $3.8 billion; this year they may be $43 billion—11 times as much.

BUBONIC BUDGETS

Federal revenues were $2 billion in 1933; estimated revenues for '49, $41-$45 billion—more than 20 times greater.

For '33 individual and corporation income taxes totaled $746,000,000—three-fourths of a billion; for '49 the President estimates those taxes at $33 billion—some 40 times greater.

Our national debt in '33 was $22 billion; today it is $252 billion—more than 11 times greater.

Federal civilian employees numbered 572,000 in '33; now almost 2,200,000—nearly 4 times as many—and were paid $972,000,000 then as against more than $6 billion this year—6 times as much.

In 1933 we were not asked to provide $15 billion for national defense, $6 billion for Veterans' care, education, and hospitalization, $7 billion for foreign aid, $5¼ billion just for interest on the national debt, and $3 billion for public works. This is the genesis of a suggested budget next year that may exceed $45 billion—five years postwar.

FOLLOWING long years of research, and three of intensive study, the National Association of Manufacturers' able government spending committee, staffed with the experts and composed of more than a hundred practical business executives, has concluded next year's budget could be held within a maximum approximating $37 billion. This is premised upon findings of congressional committees and statements of those in high authority. Its budget and study and recommendations have been approved by the NAM board of directors, and made available to the Congress and executive department becomes their archenemy. As well as to the public. Such a budget will be criticized as too high—too extravagant—by those demanding greater reduction—and too low and unrealistic by those asking more spending.

Well knowing *large* additional savings could be made, if an informed and forthright public would so demand, and that further expenditures can and will be urged, with seeming military and paternalistic justification, the committee believes that amount amply adequate. These findings represent a studied, honest conviction: that all necessary functions can be served well within that maximum amount; that the necessity for drastic reduction of spending compels the most courageous and patriotic action to challenge the social, industrial, political, economical, and moral catastrophe that impends—to salvage and restore the economic strength that is our only salvation; and that the economies proposed are sound and possible of accomplishment.

If only there were space to detail the willful waste in our Federal bureaucracy! Certainly a few instances demand exposure and will serve as examples. Under inquiry their multiplication would shame guinea pigs.

Here are the findings:

THAT, in average Federal experience, a routine transaction often requires from two to several hundred times the manpower or time necessary therefor in the business world.

That, in the first eight months of 1948, the Federal government added a new worker to its civilian payrolls every three minutes—513 per day.

That Federal civilian employees have increased from 983,000 in 1939 to nearly 2,200,000 in 1948.

That this number could be reduced by at least 500,000, as repeatedly asserted by Senator Harry F. Byrd, one of our best informed statesmen and student of government cost and economy.

That the Veterans' Administration is demanding some 90 additional hospitals, 49 of which are already in the blue-print stage. Yet it rejects the use of Naval hospital facilities, presently, or soon to be available, capable of accommodating 20,000 Veterans. That it is unable adequately to staff its existing hospitals, more than two-thirds of whose beds are now occupied by patients receiving treatment for ailments unconnected with war service disability. That government hospital beds cost up to $23,600 each—more than double the average cost in nongovernment metropolitan hospitals. Is the Veterans' Administration being used as a build-up for socialized medical care?

That three years after World War I, 2,200,000 persons were receiving regular payments from the Federal government, while three years after World War II, 15,000,000 are receiving such payments—7 times as many.

That, in subsidizing farm production, tens of millions were spent last year to support the price of potatoes, while 22,000,000 bushels were destroyed and the public paid $2.60 a bushel in the market—twice the 1941 price.

THAT the government buys potatoes at $1.55 per bushel—plus 40 cents freight—and almost gives them away to be processed into potato flour, at a cost 5 times that of wheat flour.

That the Department of Agriculture, to dispose of its surplus of subsidized potatoes, sells them for one cent a sack to buyers who dump the potatoes in the river and sell the sack back to the government for 15 cents.

That such subsidy has so stimulated the production of potatoes as to "threaten" a yield of 491,000,000 bushels—about 100,000,000 bushels more than the planners planned—presenting a real problem to a government that has already bought 65,000,000 bushels of the 1948 crop. Under subsidized price support production can become a curse or worse.

That $6,000,000 will be spent this fiscal year to support the price of "peanuts."

That at least $1 billion could be saved if operations of the three branches of the Armed Services were actually merged, as required by the National Security Act of 1947. But, the heads of these branches—because of professional rivalry or outmoded loyalties — deliberately evade and by-pass the law.

If such things be true, as can be verified, why is not something done about it? Must hundreds of millions —yes, billions—of dollars be so squandered? Are our genius and

¶ "OUR *national debt in '33 was $22 billion; today it is $252 billion—more than 11 times greater. Federal civilian employees numbered 572,000 in '33; now almost 2,200,000—nearly 4 times as many—and were paid $972,000,000 then as against more than $6 billion this year—6 times as much.*"

achievement in industry and mass production not applicable or available to the processes of government? Are we to prove ourselves incapable of self-government by the mere failure or refusal to operate free government successfully and within our joint ability to pay for it?

RETURNING to the plot of the play—the plague—let's reanalyze and realign the players: the few saboteurs, the novitiates, the confused, and the ignorant. Conspicuous are the pink-tinted nonentities, ambitious personalities, and political opportunists, seeking power or plaudits, who encourage these dangerous or thoughtless elements with small regard for the consequences. Massed in the background is a gullible public—the people—the lymphatic glands of a Republic—sluggish because business-bound or hypnotized by the fabricated intricacies of our bewildering modern society, economy, and bureaucracy.

Here are the sources and ingredients of Socialism—the infected "carriers" and their "contacts," the fellow travelers, the reckless and radical seeking power, and the numberless crowd standing by, exposed to if not inviting inoculation.

Between the people and this unhappy accumulation of confused intent stand our chosen representatives in government—from the high office of Chief Executive to the smallest position in local government — almost entirely "good men and true"—staunch Americans, proud of their heritage and eager to preserve it. Attacked and pressured by the forces of the left, they seek, need, and deserve, support from the greater forces of the right. Here then is the part of the people—of the individuals—of all of us. Only in this supporting rôle can we determine whether life shall be comedy, drama, or tragedy.

If only the people could know our country is infested with sizable elements who strive to degrade us into Socialism, by government spending, taxation, and inflation—the inseparable trinity of tragedy; that it has been done elsewhere and could be done here. If only they realized that continued Federal spending of present proportions—not to mention proposed increases—will surely produce insolvency, destruction of private enterprise, confusion, and insurrection—resulting in some form of Socialism.

How shall they be told? What a challenge and task for teamwork—by these representatives, the people, labor, industry, agriculture, our entire society —that there may be a better tomorrow for everybody—measured in terms of peace, progress, humanity, and Christianity.

If only there were some way to inoculate the forces of right and of reason with the zeal and vigor of the foreign fallacies.

Blessed with liberty and privileged to live in a land granting to all the greatest boon to mankind, the right to work—hard and long, but as we will—let's not lose by default, as so many have and we could. To preserve no more than that—the right to live as freemen—is worth any effort or sacrifice.

Knowing only those with the will to be free will be free and only those daring to be free deserve to be free, appeals must be made to arouse and inspire such will and daring.

In final warning, we must beware both of the "carrier" and the "contact." But, first, we must study and practice ideological eradication, and substitute pest control for government control, lest government, out of control, incubate bubonic budgets into a devastating plague for all the people.

"AMERICAN *businessmen have inherited and are now chiefly responsible for the fate of the only strong free economy left in the world. The success of our foreign policy, as well as our domestic welfare, depends upon the strength and vigor of our own economic system—on the way we demonstrate to all the world the superior performance and the greater vitality of a free economy. The key to this is Enterprise—in the fullest sense of the word.*

"Essential to economic progress in a free society are the myriad individual decisions of forward-looking businessmen to put their ideas, their capital, and their energy to work. To start new concerns or expand old ones; to introduce new technological processes or improve old ones, or lose when they are unsuccessful.

"This is the rôle of private business. It supplies the means of economic progress, and, in a competitive system, shares the results with all members of the economy. And this is the rôle which business must continue to play if the economy is to remain strong and to grow even stronger.

"On the other hand, government has a responsibility which business, left to itself, cannot fulfill. It is the responsibility of creating the environment in which the enterprise system can grow with its benefits made available to all.

"This means enforcing competition, and protecting national resources against wasteful exploitation and dangerous depletion; it means serving as an umpire among clashing interests and providing security and stability. These are generally protections of society against business excesses.

"But there is another basic rôle of government—and this is in support of business: It is to encourage investment—not so-called public investment which merely adds to governmental budget deficits, but private investment, such as the 18½ billion being spent this year on new plant and equipment.

"In future years, business will spend that much again, and many times more, and the economy will grow accordingly, if government makes it possible and sufficiently attractive to induce private capital to take the risks of expanding our industrial capacity.

"This will require a revision of present governmental tax and fiscal policy. Private investors must have the surpluses, and credit must be available so that they have the means of investment. The potential rate of return must be high enough to encourage risk taking. And taxes must not be confiscatory when this return is obtained."

—RICHARD GLENN GETTELL,
Assistant to publisher, Fortune Magazine.

Do We Need Separate U.S. Radio And Utility Commissions?

The recent recommendations of the Hoover Commission for reorganizing Federal regulatory agencies has opened up basic questions of whether the Federal regulatory commissions were properly established, in the first place, from the standpoint of over-all effective control of interstate utilities. Nearly all the states have single regulatory commissions for various utilities. Should the Federal government follow a different course? Should there be a separate Radio Commission? Here is a discussion of the possible advantages of consolidating Federal regulatory control over gas, electric, and communications services.

By HARRY R. BOOTH*

STATE regulation of utilities is practically universally patterned upon the plan that a *single* agency can most effectively regulate the gas, electric, street railway, telephone, railroad, and other utility operations within each state. With few exceptions,[1] each of the more than 40 utility commissions possess over-all jurisdiction of the utilities within each state, though the powers of many of the commissions vary. In nearly all instances, a single regulatory statute forms the primary basis for control, though, in a few cases,[2] a commission may administer a number of separate laws.

Admitting beyond any question, that the interstate operations of the railroads require—as they necessarily do—a single and separate regulatory agency, are there sufficient reasons in the public interest to warrant the consolidation of the remaining principal Federal utility regulatory functions for gas, electric, and telephone companies in a single Federal utility agency?

If such a scheme were adopted, it should mean the consolidation of the telephone and telegraph regulatory functions of the Federal Communications Commission with the present functions and powers of the Federal Power Commission into a single regulatory agency, leaving the Federal Communications Commission again—as it originally was—a commission dealing exclusively with radio prob-

*For personal note, see "Pages with the Editors."

[1] Iowa, Texas, Florida. Delaware has no commission at all.

[2] New York and Michigan are notable instances.

lems. It is hardly open to dispute that the growing importance of radio and television, and the momentous and major issues now before the Communications Commission and the industry, require that the agency be in a position to give far greater attention to radio problems than in 1934, and the real issue would seem to be whether the agency should be free to give radio problems its exclusive consideration.

THE plan of a single agency should also involve the transfer of the functions of the Securities and Exchange Commission under the Holding Company Act of 1935, relating to electric and gas companies, to the new agency, though there may be good reasons—as the Hoover task force indicated that this might be deferred until the commission substantially concludes its work under § 11, relating to the integration and simplification of holding company systems. The Hoover task force report dealing with these two agencies stated:[3]

> Upon substantial completion of the integration and corporate simplification program under § 11, the remaining powers and functions of the Securities and Exchange Commission under the Holding Company Act will then largely overlap and parallel these functions of the Federal Power Commission. At that time, the functions of both agencies in this field should be re-examined, integrated, and placed in a single agency.

The Federal Communications Commission was created by "The Communications Act of 1934," approved on June 19, 1934. The purpose of the bill was to provide for the regulation in interstate and foreign commerce of the communication by wire and radio so as to make available to the people, a rapid, efficient, nation-wide, and world-wide wire and radio communication service, with adequate facilities at reasonable charges. It was also intended to provide for the national defense and for promoting safety of life and property through the use of wire and radio communication and to bring about a more effective execution of the policy by centralizing authority in a single agency, and to grant additional authority to the new commission with respect to interstate and foreign commerce in wire and radio communication.

It was thus primarily enacted because of the need and demand for additional statutory control over the interstate operations of the telephone and telegraph industries and the apparent failure of the Interstate Commerce Commission to give adequate attention to the powers it then had over these companies.[4] The need for expanding the control of the Federal government over the radio industry was a further reason for the creation of the commission and the bill's enactment.[5]

FOR a period of years following the enactment of the law, it appears that the telephone and telegraph problems received at least equal, if not, in

[3] "Task Force Report on Regulatory Commissions (Appendix N)," prepared for the Commission on Organization of the Executive Branch of the Government, page 150, 1949.

[4] The act also conferred upon the commission authority previously exercised by the Postmaster General with respect to government telegraph rates, and powers exercised by the State Department under the Cable, Landing, License Act.

[5] For related congressional hearings and reports, see Reports on Communications Companies, 73rd Congress, 2nd Session, HR 1273, April 18, 1934, and June 4, 1934, and Hearings before Senate Committee on Interstate and Foreign Commerce, 71st Congress, 2nd Session, S 6.

fact, the major attention of the commission. Immediately upon its organization, the commission took advantage of § 5, which authorized the commission to divide its members into not more than three divisions; to authorize and assign to each division the commission's functions arising under the act (5-b); and (5-c) each division was thereby given authority on behalf of the commission to perform the same duties and obligations upon behalf of the commission. On July 17, 1934, the commission entered an order, creating three divisions: namely, broadcasting as Division 1, telegraph as Division 2, and telephone as Division 3. Each division was given jurisdiction over all matters relating to each particular phase of the commission's functions.[6] This practice continued until October 13, 1937,[7] when the commission adopted Order No. 20 dissolving all powers previously vested in each division and provided that thereafter the functions were to be exercised by the full commission itself. It was not until April, 1941, that the commission set up a telephone committee which was authorized to act for the full commission on major matters of policy and regulation in the telephone field, and in August, 1944, that it created a telegraph committee with certain powers to deal with telegraph rate structure matters. This and other aspects of the delegation of authority by the commission have been summarized in the hearings on the White Bill.[8]

THE major attention given common carrier problems was evidenced by the investigation of the telephone industry conducted by the commission pursuant to PR No. 8, 74th Congress, which culminated in its final report of June 14, 1939. In that investigation, the commission developed a great deal of valuable material and data relating to the technical and other aspects of

[6] Volume 1, FCC Reports, page 3: "Washington, D. C., July 17, 1934. The Federal Communications Commission organized its divisions today in keeping with the Communications Act. Three divisions, composed of three members each, were created, with Chairman E. O. Sykes serving on each division. The division and personnel follow . . .

"THE BROADCASTING DIVISION shall have and exercise jurisdiction over all matters relating to or connected with broadcasting.

"THE TELEGRAPH DIVISION shall have and exercise jurisdiction over all matters relating to or connected with record communication by wire, radio, or cable, and all forms and classes of fixed and mobile radiotelegraph services and amateur services.

"THE TELEPHONE DIVISION shall have and exercise jurisdiction over all matters relating to, or connected with telephone communication (other than broadcasting) by wire, radio, or cable, including all forms of fixed and mobile radiotelephone service except as otherwise herein specifically provided for."

[7] Volume 4, FCC Reports, page 41.

[8] Hearings before a subcommittee of the Committee on Interstate and Foreign Commerce, U. S. Senate, 80th Congress, 1st Session, on S 1333, pages 602 and 603. Statement made on June 17, 1947.

¶ *"THE issues of radio and television have become a factor of major importance in our social, political, and economic life. It is only necessary to briefly examine the grave and complicated problems currently before the Federal Communications Commission to realize the vital need of enabling that commission to deal exclusively with broadcast problems."*

the operations of the telephone industry. The staff reports, as well as the reports prepared by the rate and research department, have been used widely in connection with the regulation of the telephone industry. Subsequently the commission enlarged its common carrier section, and on April 1, 1941,[9] instituted a formal inquiry into the interstate operations, earnings, and expenses of the Bell system.

Unfortunately, the formal investigation begun in that year, and a subsequent one begun in 1942, were not carried to their logical conclusion, due, in part, to the desire of the Bell system to compromise the proceedings and to reduce its interstate toll charges and avoid the possibility of formal findings by the commission, which resulted in dropping the cases. But, additional considerations undoubtedly included the fact that the commission was engaged in serious congressional and industry conflicts over its control of the radio industry, as well as the impact of the war itself, particularly with respect to the 1942 hearings. The fact remains, however, that formal adjudications as to what constitutes a proper rate of return; what property and expenses are devoted to interstate toll operations; and what are proper costs to be allowed to Western Electric for supplies sold to the Bell system—these, and other issues, have not been formally decided by the commission.

However, in recent years, the commission staff has been working with the telephone committee of the National Association of Railroad and Utilities Commissioners, participating in studies of the problems of the separation of costs of property and expenses between intra- and inter-state operations and other related problems. The commission has, of course, other substantial responsibilities in the common carrier field, and has been performing other tasks than those indicated. It has been working on telephone accounting problems, including the restatement of plant and original cost; working on continuing property record with state commissions; studying depreciation problems, and recently fixed the depreciation rates for one Bell system associated company—that of the Michigan Bell Telephone Company. It also has been faced with considerable problems from time to time dealing with the Western Union Telegraph Company and its rate structure, as well as its service problems.

IN considering the question of whether the separation of broadcast and common carrier functions is desirable, it may be well to again glance at the broadcasting industry problems before the Federal Communications Commission. These problems are no longer a minor matter for the American people, the commission, or the industry. The issues of radio and television have become a factor of major importance in our social, political, and economic life. It is only necessary to briefly examine the grave and complicated problems currently before the Federal Communications Commission, to realize the vital need of enabling that commission to deal exclusively with broadcast problems. Let us see what they are, as the commission itself has outlined them in its 14th Annual Report:

1. The limitations upon the present radio spectrum require that the com-

[9] See Annual Report for 1941, page 13.

Separation of Broadcasting and Common Carrier Functions

"IN determining whether the separation of the broadcasting and common carrier functions of the commission is desirable, it is necessary to consider, first, the extent to which, if any, the public interest might be endangered by such a move, and, second, whether the public benefits are of a substantially sufficient character to warrant such a step."

mission review and revamp the commission radio service.

2. The commission is playing a greater rôle in international frequency allocation problems. Fifteen sessions were held on these problems in the past fiscal year, and 20 are in prospect for the current year. This requires considerable time of the commissioners themselves, as well as their technical staff.

3. There were over 635,000 radio authorizations as of June 30, 1948—an increase of 85,000 during the prior year.

4. The commission received 200,000 applications for the year ended June 30, 1948.

5. The total number of broadcast authorizations—an increase of 400 over the previous year—brought the total number of stations in 10 categories to nearly 4,000. "Of this figure, 3,163 were major broadcast outlets—2,034 amplitude modulation (AM); 1,020 frequency modulation (FM); and 109 television (TV). They represented a gain of 239 AM; 102 FM; and 43 TV stations." (Page 2.)

6. There is a sharp increase in TV applications; noncommercial educational stations increased from 38 to 46 and TV experimental stations increased from 81 to 124.

7. Safety and special radio service required a great deal of increased attention.

8. Police radio, emergency fire stations, used by utilities, oil companies, etc., also increased greatly.

9. Radio operators increased 64,000, and amateur operators total nearly 80,000.

10. There was a substantial increase in engineering, and monitoring activities, interference and complaints, etc.

WHILE the growing character of the broadcasting problems facing the commission have, of course, been generally recognized, in the hearings on the White Bill, former Chairman Denny denied "that the commission has centered its attention, as well as the attention of the staff, on broadcasting at the expense of the other matters

entrusted to the commission's jurisdiction."[10] However, he admitted that "the burden of the commission's work in all fields has increased at an amazing rate and is becoming more and more difficult for all seven commissioners to devote the necessary time to a detailed study of every problem in each of the three major fields."[11] (Broadcasting, safety and service, and common carrier.) Chairman Denny, while also agreeing that common carrier and broadcasting problems involved separate philosophies and problems, said that there was no proof that the commission has applied the common carrier philosophy to its regulation of the radio industry.[12]

In determining whether the separation of the broadcasting and common carrier functions of the commission is desirable, it is necessary to consider, first, the extent to which, if any, the public interest might be endangered by such a move, and, second, whether the public benefits are of a substantially sufficient character to warrant such a step. Taking up the first point, it is clear that the regulatory problems of the radio industry and telephone and telegraph companies are separable and distinguishable. This fact has been generally conceded. The staff of the commission is divided both as to legal, accounting, and engineering studies between common carrier and broadcasting functions. Given the staff and powers, another utility agency—preferably one which has been dealing with gas and electric utility problems—could therefore handle the telephone and telegraph regulatory problems as efficiently as can the present Communications Commission. The radio industry would not suffer, and neither the public nor the common carrier industry would likely suffer by such a change. Moreover, no great extraordinary difficulties appear to lie in the proposal to transfer the common carrier staff of the Federal Communications Commission to a different agency.

To the extent that the Bell system and other common carrier facilities are used for FM or TV program transmission, and in so far as the problems in the future include the determination of the proper rates for the use of the facilities, it would seem that the new regulatory agency could appropriately determine matters of this kind or that these matters would be determined by joint action between the reëstablishlished Radio Commission and the new combined regulatory body. To the extent that the Bell system or other common carrier companies apply for frequencies, the jurisdiction of course would be exclusively within the control of the Radio Commission.

These tremendous radio problems, the commission has indicated cannot be adequately handled. Former Chairman Denny, only two years ago, admitted[13] that "in the broadcast field we have a huge backlog." At that time, this was attributed to the abnormal broadcast load thrust upon the commission after the war. However, the recent Hoover Commission task force study rather severely criticized the commission for its inability to ade-

[10] Hearings on the White Bill, S 1333, 80th Congress, 1st Session, page 17.

[11] The Independent Regulatory Commissions Report to Congress, March, 1949, page 4.

[12] Hearings on the White Bill, S 1333, 80th Congress, 1st Session, page 17.

[13] Hearings on White Bill, S 1333, 80th Congress, 1st Session, page 17.

quately and efficiently handle its great responsibilities, and made a number of recommendations for improving the administration and operation of the commission, including the suggestion for the use of panels.[14] While it should be noted that the Hoover Commission itself did not, in its final report, join in this specific criticism, the commission stated that "regulatory commissions often neglected their planning functions; did not provide for adequate delegation to staff, or provide proper administrative direction for the commission's work."[15]

However, it is submitted that the tremendous tasks and responsibilities of the Communications Commission in the radio field cannot be adequately or fully performed unless the commission is free to give its exclusive attention to these problems. That does not mean that in the past the commission has not, on the whole, done an excellent job, but the writer believes that the public and the Congress are not sufficiently aware of the tremendous growth of the technical problems and responsibilities facing that agency, particularly in the broadcasting field, and that they have now reached a point of such major importance that proper administration may not be accomplished through the adoption of proposals for panels, or other similar temporary or inadequate measures. To do justice to the problems, it is necessary that there again be a Radio Commission.

THE telephone regulatory problems are currently of a major character. The Bell system already has applied for approximately $500,000,000 in telephone rate increases before the various state commissions and has received increases totaling at least $200,000,000 annually. It is no answer that since these applications are exclusively for increases in intrastate rates, that the telephone rate problems are of no great concern to the Federal government, or to the Federal Communications Commission. In each of these cases before the state commissions, the question arises as to what are proper allocation of cost of investment and property, and expenses between intra- and inter-state service. The question is also involved as to proper allowance to be made for property purchased from the Western Electric Company. One branch of the Federal government, the Department of Justice, has recently filed a complaint in a Federal District Court holding that the relations between the Bell

[14] Hoover Task Force Report 1949, pages 94-98.

Considering the essential academic character of the task force staff, it must be admitted that they performed an excellent job. Whether a staff which included more persons with specialized regulatory experience and responsibility would have reached the conclusions expressed by this author, or still different opinions, is of course an open question.

[15] Independent Regulatory Commissions Report to Congress, March, 1949, page 3, 4.

¶ "IN *1942, when the Bell system was about to seek rate increases throughout the country, the Office of Price Administration stepped into the picture, though it had no jurisdiction over utility rates, and secured an agreement from the Bell system that it would seek no increases during the war.*"

system and the Western Electric and its associated companies, violate the antitrust laws, and are contrary to the public interest.

It would seem, therefore, that the telephone regulatory problems are of sufficient importance so that they should be controlled by an agency which is not as overwhelmed by the demands for the solution of unrelated problems, as is the case of the Federal Communications Commission, in connection with its responsibilities over radio problems. In 1942, when the Bell system was about to seek rate increases throughout the country, the Office of Price Administration stepped into the picture, though it had no jurisdiction over utility rates, and secured an agreement from the Bell system that it would seek no increases during the war.

While it is true the price and economic situation is currently different than it was then, the steps that a Federal agency would take, whose primary concern dealt with the utility regulatory problems, can only be determined if the functions and jurisdiction of the Communications Commission over the telephone and other common carrier matters were transferred to a single regulatory body.

Since the Hoover Commission has recommended the transfer of certain nonregulatory functions now within the control of the Federal Power Commission to the Interior Department, (if this were done) the Power Commission, as the new single utility regulatory agency, would find itself in a better position to take on new responsibilities. This transfer would involve the present functions of the Power Commission with respect to river basin and power market surveys.

If the plan proposed herein were adopted, the public and the industry would have the advantage of having an agency dealing exclusively with broadcasting problems, and the reëstablished Radio Commission would be free to give its exclusive time to these great responsibilities. This should prove to be of immeasurable value to the public, the industry, and the commission itself.

Merely because the Federal Communications Commission believes that it is up to date in dealing with telephone and telegraph regulatory problems, does not mean that they do not take so much of the time of the commission that they retard the commission in the handling of its predominant and greater responsibilities over the broadcasting industry.

It is suggested, therefore, that the public interest would be greatly served by the following:

1. Why not recreate the Federal Radio Commission, which would have exclusive jurisdiction and responsibilities over radio and broadcasting problems, with such additional statutory powers as may be necessary, an adequate appropriations and staff to deal with these problems?

2. The Federal Power Commission's name could be changed to some such name as the "Federal Utility Regulatory Agency," or maybe a shorter title, such as simply a "Federal Utility Commission." The label is merely an unimportant detail. The present members of the commission could continue to serve as the members of the proposed regulatory agency.

The membership of the utility commission might well be increased to seven, which would make possible the utilization of the expert services and experience in the common carrier field of a man such as Commissioner Paul Walker of the FCC.

3. The present jurisdiction and functions of the Communications Commission over common carrier companies might well be transferred to the new Utility Regulatory Agency, and the common carrier legal, technical, and engineering staffs could also be transferred to that agency.

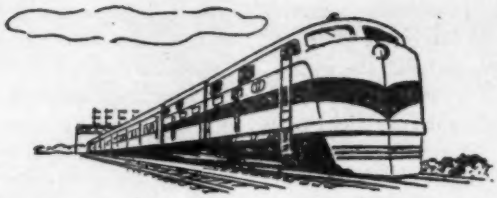
4. Congress could provide that, as of not later than January 1, 1955, the jurisdiction and powers of the Securities and Exchange Commission over gas and electric companies be shifted to the Federal Utility Regulatory Agency. By that time, the Securities and Exchange Commission should have concluded its work under § 11, providing for the reorganization and integration of utility holding companies.

5. To the extent that the President will be given power under the proposed Reorganization Act, he might himself carry out the above program.

Gas and Electricity Only Living Costs to "Break A Hundred" in U. S. Postwar Price Index

THE following table illustrates in detail the 5-month drop in the consumers' price index as compiled by the Labor Department's Bureau of Labor Statistics. The index is measured in retail prices of goods and services purchased by moderate-income urban families. The 1935-39 average equals 100 per cent; in other words, registering price changes since the beginning of World War II. The miscellaneous group includes such items as gasoline and soap prices, and hospital and postal rates.

Group	*Sept. 15 1948*	*Oct. 15 1948*	*Nov. 15 1948*	*Dec. 15 1948*	*Jan. 15 1949*	*Feb. 15 1949*
All items	174.5	173.6	172.2	171.4	170.9	169.0
All foods	215.2	211.5	207.5	205.0	204.8	199.7
Cereals, bakery products	170.7	170.0	169.9	170.2	170.5	170.0
Meats, poultry, and fish	265.3	256.1	246.7	241.3	235.9	221.4
Meats	265.9	254.3	243.1	235.4	228.2	212.3
Beef and veal	280.8	269.8	262.4	255.1	244.5	220.5
Pork	247.9	233.9	214.4	206.2	203.1	196.3
Lamb	256.6	249.4	246.5	238.6	234.4	228.4
Chickens	209.4	204.0	200.5	208.0	208.9	199.0
Fish	314.9	325.9	328.1	328.1	331.7	327.2
Dairy products	208.7	203.0	199.5	199.2	196.0	192.5
Eggs	226.6	239.0	244.3	217.3	209.6	179.6
Fruits and vegetables	195.8	193.5	189.4	192.3	205.2	213.8
Fresh	199.6	197.3	192.4	196.2	213.3	224.9
Canned	159.0	158.9	159.4	159.4	159.2	158.6
Dried	249.1	238.1	230.6	229.8	228.4	226.6
Beverages	205.6	205.9	206.4	207.8	208.7	209.0
Fats and oils	196.8	193.0	189.4	184.4	174.7	159.8
Sugar and sweets	173.2	173.1	173.3	173.0	173.4	174.3
Apparel	201.0	201.6	201.4	200.4	196.5	195.1
Rent	118.5	118.7	118.8	119.5	119.7	119.9
Fuel, elec., refrigeration	137.3	137.8	137.9	137.8	138.2	138.8
Gas and Electricity	94.6	95.4	95.4	95.3	95.5	96.1
Other fuels	191.0	191.4	191.6	191.3	191.8	192.6
Ice	137.6	137.9	138.0	138.4	139.0	140.0
House furnishings	198.1	198.8	198.7	198.6	196.5	195.6
Miscellaneous	152.7	153.7	153.9	154.0	154.1	154.1



Transport Problems in Western Europe

As a British delegate on the Central Rhine Commission, and British member of the Transport and Communications Commission of the United Nations, Sir Osborne has made a close study of the transport situation in Western Europe, with particular reference to the possibilities of the more recently proposed "Western Union."

By Brigadier General Sir H. OSBORNE MANCE*
HIS ROYAL BRITANNIC MAJESTY'S ARMY ENGINEERS (RET.)

In considering the possibilities of transport in relation to a Western European alliance we must distinguish between the short-term and the long-term problems—between physical reconstruction and improvements in international coördination; between measures which can be taken by transport independently, and those which must wait on developments in other aspects of Western Union (such as the currency and customs régimes and citizenship); between developments which could take place under existing political conditions, and those dependent on a merging of sovereignties.

Transitory problems of physical reconstruction, are being dealt with through the Marshall Plan; this provides for a pooling of the productive resources of the participating countries, among which are all the prospective members of the proposed Western Union. Given temporary financial aid to bridge the dollar gap and to facilitate inter-European payments, the reëstablishment of transport to meet the demands of European recovery is a straightforward technical problem, whose solution lies for the most part in the hands of each individual country. The reëstablishment of railways, roads, waterways, and ports already is keeping pace with requirements. There may be competing claims for outside assistance in meeting the undoubted deficiencies of railway rolling stock and road transport vehicles, but with Marshall aid all these physical problems should be solved.

The removal (which, it is hoped, will take place very shortly) of certain obstructions to the reëstablishment of normal conditions of transport will facilitate Western coöperation; in

*For personal note, see "Pages with the Editors."

particular the restoration to Rotterdam and Amsterdam of traffic diverted to German ports to save dollars, the readmission of German vessels to Allied sections of the Rhine waterways, and the establishment of a German currency which can be used for external transactions.

An important short-term measure of Western coöperation with long-term repercussions is the proposed standardization of the half-million wagons which will have to be introduced on the railway systems of Europe to replace destroyed or worn-out rolling stock.

For the long term there already are numerous international agreements applicable to the whole European standard gauge railway system, and regulating such diverse questions as the loading gauge, the essential uniformity of rolling stock to make it interchangeable, the exchange of rolling stock in international traffic, uniform conditions for goods and passenger transport, timetables, and so on. The Central Rhine Commission has been reëstablished on an interim basis and provides a conspicuous example of international coöperation.

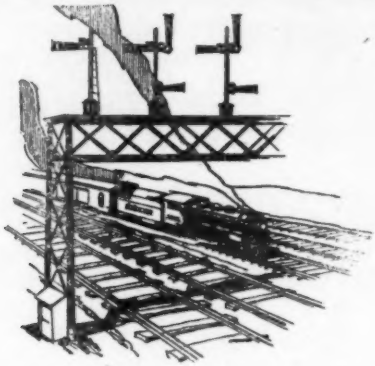
Private Cars

THERE have long been arrangements to facilitate the passage of private cars across frontiers. Provisions for the free movement of goods by road are, however, still in a trial stage, such progress as has been made being due largely to the emergency situation and limited to traffic between certain countries. The chief bar to progress in this respect is the absence in practically every country of any definite policy of coördination.

All these questions will have to be revived, the relevant agreements brought up to date, and the prewar organization for administering them improved. It is important, however, that these matters should be dealt with on a European, and, in some cases, such as road transport, on a world basis, though a Western Union, by removing internal restrictions, could usefully act as a single unit.

We approach more delicate ground when we consider the possibilities of unification or coördination in cases where at present there is strong competition between national transport organizations, between ports and transit routes, for example. It is important to remember that even complete political union would not remove much of this competition, which is as legitimate as the competition between two ports in the same country. The fundamental difference is that in the latter case any government intervention is exercised in the economic interest of the whole area, whereas the governments of different sovereign countries will not hesitate to render, if necessary, uneconomic assistance to their own transport systems for the sake of the direct or indirect national benefits which are expected to result.

THE ideal of international coördination of transport is that international traffic should pass as it would do if the whole of its journey took place in the same state. The wider concept of closer union may tend to some approach towards this ideal as a result of bargaining under the existing political conditions, but it looks as if a complete solution will have to be evolved *pari passu* with a closer eco-



Removal of Obstructions to Transportation

"THE removal . . . of certain obstructions to the reëstablishment of normal conditions of transport will facilitate Western coöperation; in particular the restoration to Rotterdam and Amsterdam of traffic diverted to German ports to save dollars, the readmission of German vessels to Allied sections of the Rhine waterways, and the establishment of a German currency which can be used for external transactions."

nomic and political union under which, for example, there would be no internal hindrances to the different parties adapting themselves to the new conditions.

IT may be asked what are the possibilities of unification of all or part of the transport systems of the Western Union.

No doubt transport would be one of the subjects controlled by any supranational organization. With a common economic and commercial policy, including a policy for the coördination of the different forms of transport, the subjects of tariff policy, finance, and development might be directed by some central body.

On the other hand, operation would have to be decentralized.

Railways, Roads, and Waterways

AS regards railways, this would probably be on the basis of the present national systems, if only on account of the language difficulty. The same considerations would probably apply to the upkeep of inland waterways and roads. Control of inland waterway and road operators would, however, be a different matter, as they can move about in any part of the Union territory under regulations which would presumably be uniform. The form of control of these operators will depend on the Union policy as regards nationalization and the coördination of the different forms of transport.

It is probably too much to expect each member of the Union suddenly to adapt itself to a new economic policy,

the execution of which may at times run counter to its immediate local interests. Thus, if any political supranational body were set up to control the operation of a unified system there would be likely internal friction which would prevent the quick and clear decisions required for the efficient operation of any commercial service.

A possible solution is to entrust the management of the technical and commercial operation of any system extending over more than one state of the Union to an independent commercial corporation enjoying identical concessions from all the participating states and operating on a purely commercial basis. Such a corporation could resist uneconomic proposals made to it for political reasons and, in its own interest, encourage the maximum development of its system. A plan on these lines would have the advantage of not being dependent on any larger merging of sovereignty. One of the first transport measures contributing to closer European union might well be the creation of a European Air Corporation.

THE possibilities of transport under a Western Union have not been adequately explored, as thought on the subject has been clouded by the assumptions of national sovereignty and competing interests. If the question is now examined at the outset from the political angle it will be difficult to get away from the previous atmosphere. It might start a new train of ideas if one or more small working parties of objective experts were entrusted with the preparation of a scheme of unification, based on technical and commercial considerations, as part of the background for considering the wider aspects of the Union.

"BY insisting on unlimited profit accumulation, big business is sapping the buying power of the customers on whom it ultimately depends, and by further entrenching monopoly it is destroying the free competitive enterprise system in which it claims to believe devoutly....

"As spokesman for the consumers who have so largely paid for business expansion during the last three years, government has a moral right and a congressional mandate to take measures to restore enterprise to its competitive function and insist on price and profit policies which do not undermine the national well-being....

"If sufficient investment capital cannot be obtained, for whatever reasons, to supply adequate funds for the expansion of American corporations, then the present contributors — the consumers—must be given some authority and control over the expanded enterprises they have financed.

"Since only the government is in a position to represent all consumers, it is obligated to investigate and then to rectify the business policies which transform booms into busts by undermining the basis of full production and full employment."

—EXCERPT *from the "Economic Outlook," published by the Congress of Industrial Organizations.*

Washington and the Utilities

Cut in Project Funds

BOTH Interior Department and Army Engineers were disappointed somewhat in the reported policy of the House Appropriations Committee to cut back on funds for public projects so as to reflect an anticipated reduction in construction costs. This amounted to an over-all 15 per cent cut in the case of the Army Engineers' Civil Functions Appropriation Bill. And a similar cut was expected in the Interior Department Appropriation Bill, due out shortly after.

As a matter of fact, the House committee report on Army Engineers' civil function funds earmarked for flood control, including power features, reflected an even higher percentage of reduction. As it came from the committee, the bill carried $321,000,000 for such projects, representing a cut of $109,937,600 from original budget requests.

Of course, the over-all 15 per cent cut for both Interior's Reclamation Bureau and Army's civil functions did not represent any curtailment in project activity as such—it did merely represent an expected reduction in the cost to the government for the same amount of work to be accomplished.

Reclamation Bureau's friends in Congress even jumped the gun on the committee report to lament the rumored cut in funds for the fiscal year of 1950. Representative Murdock (Democrat, Arizona), chairman of the House Public Lands Subcommittee on Irrigation and Reclamation, protested that "such action might cause serious, far-reaching damage."

HE particularly feared slashing funds for Davis dam (Arizona) and said such action might defer completion of the project and fulfillment of a U. S.-Mexican water treaty.

Incidentally, research shows that the 80th Congress granted transmission line funds freely, despite complaints during the past year that such funds were unreasonably slashed. Representative Case (Republican, South Dakota) has assembled statistics on appropriation of funds for government power project transmission lines showing that the 80th Congress granted the bureau more than $25,000,000 for this item alone.

The Tennessee Valley Authority had a close call on its initial appropriation ($2,500,000) for the controversial steam plant at New Johnsonville, Tennessee. This is one of the items in the First Deficiency Appropriation Bill for fiscal 1949, already approved by the House. By a close vote of 11 to 10, the committee turned down a proposed amendment by Senator Ferguson (Republican, Michigan) to make the TVA steam plant subject to a taxpayer's test suit. This would scrap the legalistic insulation which early U. S. Supreme Court decisions placed around the constitutional status of TVA's ventures into the electric business. Senator Ferguson will revive the issue on the Senate floor. But it seemed likely to get sidetracked to the Judiciary Committee as "new legislation."

What Senator Ferguson evidently had in mind was the fact that the Supreme Court even to this day has never passed on the merits of the constitutionality of TVA operations in commercial electric enterprise. Similar litigation to test the financing of public power projects by the now defunct Public Works Administration was thrown out on such grounds as incapacity of bringing suit.

Interior Cleared by Hoover Group

INTERIOR DEPARTMENT came off very well indeed in the final report of the Hoover Commission on reorganizing that branch of the Federal government. Aside from critical comment on fiscal policy and control by the Reclamation Bureau, the Hoover Commission recommendation amounted to a suggestion for more control and authority for the Interior Department than before.

This seems to represent a reversal of earlier sentiment for eliminating or deëmphasizing the Interior Department. It probably means that the Hoover Commission decided that it would be impractical to replace the well-established Interior Department with a new agency—a Department of Natural Resources. Even so, a minority of three members of the Hoover Commission filed a dissenting report calling for a newly established agency. The majority evidently believes that working out reorganization reform within the framework of the existing department would be the most that could be expected at this time without risking congressional veto.

According to the Hoover plan, Interior would become a centralized agency for nearly all government construction work and all Federal development of subsoil and water resources, including hydro power. The most controversial aspect of this is the recommendation that the civil functions of the Army Corps of Engineers be transferred to the Interior Department, together with services of Army Engineers who can be spared from military detail. The principal purpose of this recommendation is to eliminate "disastrous conflicts and overlaps which cost the taxpayers enormous sums annually." Two members of the Hoover Commission filed a dissenting report, protesting the Army Engineers' transfer.

The proposed organization of Interior would be divided into four major service divisions: (1) water development and use; (2) building construction; (3) mineral resources; (4) recreation service. Under the first of these—water development and use—would be grouped the following: Reclamation Bureau, rivers and harbors improvement, flood control, Bonneville Administration, Southwestern Power Administration, division of power. The majority report said, in the light of past experience, reclamation projects simply cannot pay for themselves, even with the "indirect subsidy of interest." On the negative side, the report referred to the "inherent conflict" in the operation of multipurpose dams for flood control as compared with power purposes. Contradictory and complex Federal reclamation laws were found in need of revision. Hydroelectric power operations were said to be "essentially business government enterprises—now subject to defects as to budgeting, accounting, and management, which successful business requires."

Gas Bills Marking Time

CONFLICTING agitation to increase Federal Power Commission control over natural gas production and gathering and, contrariwise, to get the FPC out of that picture by act of Congress, seems to be producing a kind of stalemate. Perhaps it could be more accurately stated as a sort of watchful truce. On one hand, the fear that the FPC would boldly move to implement the full authority interpreted for it under the Natural Gas Act by the Supreme Court decision in the Interstate Natural Gas Company Case—(1947) 69 PUR NS 1—is dying down. Concurrently, the drive to push bills to limit FPC powers under the Natural Gas Act is losing some of its steam.

It is still expected that certain Federal commission members and staff officials will seek further extension of FPC control, if given a convenient opportunity. But the over-all picture, at present, is one of caution on the part of both Congress and the administration. Administration officials are convinced that any major attempt to interpose new controls would be certain to revive congressional agitation to amend the Natural Gas Act—perhaps with success.

The FPC attitude on gas regulation is still divided. The fundamental dissension which characterized the commission's stand on the Moore-Rizley Bill in the 80th Congress continues to exist. Commissioners Olds and Draper, joined by Buchanan (whose nomination still awaited confirmation by the Senate) and staff, oppose any amendment of the act which would curtail FPC jurisdiction. On new gas legislation, Commissioners Smith and Wimberly might be expected to take a compromise position.

SOME legislative progress will be made on bills to clarify FPC authority under the Natural Gas Act. Committee action on the Lyle and Harris bills (HR 79 and HR 1758) to exempt production-gathering from FPC control is under way. But final action at this session is doubtful. Representative Harris (Democrat, Arkansas), chairman of the House Subcommittee on Petroleum and Federal Power, planned to start hearings on these two similar measures April 5th. Harris hopes that "They would clarify the confused status of the commission's jurisdiction" arising from the Supreme Court decision in the Interstate Case. If enacted, the measures would amend the Natural Gas Act of 1938 so as to spell out an exemption from FPC control of all sales of gas at "arm's length" by gas producers. Such exemption would not apply to pipeline companies controlling their own production and gathering facilities.

Straus-Boke Issue

THE administration received another minor setback, not necessarily final, when the Senate Appropriations Committee refused to restore Reclamation Bureau Commissioner Straus and his California director, Richard L. Boke, to their jobs. The full committee reported out the First Deficiency Appropriation Bill (HR 2632) without including the House-approved rider restoring Straus and Boke to the payroll. The committee did appoint a 3-man subcommittee to take the matter up with President Truman.

Last year the position of the two chambers was reversed. Then it was the Senate which supported Straus and Boke and yielded to the House insistence, that they be disqualified, only after a conference battle. Straus is particularly annoyed about the loyalty issue raised in the committee hearings, when Attorney General Clark refused to turn over Federal Bureau of Investigation files on the two officials now serving without pay. The request for FBI files on Straus and Boke was made after the committee had considered House Un-American Activities data.

Straus and his superior, Secretary of Interior Krug, have asked for an open loyalty hearing by the Senate subcommittee. Krug said, in a letter to the subcommittee:

> The loyalty issue which has been raised at this late date in connection with the right of Straus and Boke to be paid for their services is a complete phony. It is instigated by Senator Downey (Democrat, California) because his fight to give vast Federal benefits to large landowners in California has failed in every other instance.

Straus, in a 3-page letter to the same Senators, said "if anybody has questioned or is questioning loyalty, I have not been informed of such action."

Straus said confusion has been "deliberately engendered," and the real issues have to do with the size of land holdings on Federal reclamation projects and with Federal power policy.

The long-awaited special Hoover Commission report on national public power policy drew some advance criticism from administration supporters. Widespread leaks appearing in the press during March reported differences of opinion among commission members in rejecting a task force report. These advance stories confirm an earlier report to the effect that four members, including Chairman Hoover, will favor a policy for getting the Federal government out of the power business. The final report was officially released on April 1st.

Exchange Calls And Gossip

Summary of Bell System Rate Cases

THE National Association of Railroad and Utilities Commissioners has compiled and published a very complete and enlightening roundup of Bell system telephone rate increases in the various states. Its summary reveals that more than $200,000,000 in rate increases have been granted to Bell system companies since September, 1946, when the first major postwar rate increase petition was filed in North Carolina.

The NARUC survey was released as a bulletin to state commission members from headquarters in Washington, D. C., 7411 New Post Office building, by Austin L. Roberts, Jr., assistant general solicitor.

The study covers the period between September 17, 1946, to March 15, 1949. Specifically, the total increases granted, as of the end of the period, amounted to $200,398,828. In addition to the amounts granted there were applications pending which totaled $246,590,000. The rate increases granted represent roughly an increase in the average monthly telephone bill of about one-sixth over the prewar period, as compared with an increase in the over-all cost of living of nearly three-fourths.

System company rate increases have been applied for in all states except Nevada. In Delaware, Texas, and Iowa there is no commission regulation of telephone companies on the state level. Certain "home rule" cities do have jurisdiction over rates in these states. Excluding these three states, increases have been granted by state commissions to the full amount requested, on applications on which preceedings have been completed in the following twelve states and the District of Columbia: Arizona, Colorado, Florida, Idaho, Massachusetts, Missouri, Nebraska, New Mexico, North Dakota, South Dakota, Virginia, and Wyoming. On other applications on which state commission proceedings have been completed (excluding those just mentioned, which were granted 100 per cent) the percentages of the request allowed are as follows:

California	71%
Connecticut	87
Illinois	84
Indiana	88
Kentucky	78
Louisiana	90
Maine	90
Maryland	84
Michigan	78
Minnesota	80
Mississippi	63
Montana	58
New Jersey	65
North Carolina	95
Oregon	69
South Carolina	97
Utah	65
Washington	81
Wisconsin	67

THE over-all average of increases granted, including states granting 100 per cent of the amount sought (but excluding Delaware, Iowa, and Texas) is 87 per cent. In a number of the states, subsequent rate increase applications have been made. The full amount of increases, as sought, was put in effect by the courts on review of commission orders in Alabama, Georgia, Mississippi, Tennessee, and Vermont. Commission orders are now under court review in

Kentucky and Rhode Island. Below is the complete breakdown by states.

The accompanying table, as published by NARUC, included 36 detailed footnotes which are omitted here, except for the three generalized symbols showing

State (1)	Total Increases Requested (2)	Date of Last Order (3)	Increases Granted Or Made Effective (4)	Pending Applications (5)
Alabama	$2,530,000	3/17/48	$2,530,000*	—
Arizona	2,329,000†	3/ 7/47	865,000	$1,464,000
Arkansas	1,750,000	9/24/48	1,750,000†‡	—
California	73,701,000‡	2/23/49	41,364,300	20,655,000
Colorado	3,175,000	—	3,175,000†	—
Connecticut	4,765,000	10/17/47	4,163,000	—
Delaware	975,000	—	—	975,000
District of Columbia	2,018,000	12/22/47	2,018,000	—
Florida	7,243,000	12/23/48	4,014,000†‡	3,229,000
Georgia	7,750,000	1/10/48	5,180,000*	2,570,000
Idaho	1,247,000†	1/10/47	645,000	602,000
Illinois	65,780,000†	12/ 3/47	25,455,000	35,480,000
Indiana	4,490,000†	10/20/47	3,065,000	1,000,000
Iowa	3,450,000	6/10/48	3,450,000	—
Kansas	3,349,000	1/14/49	3,314,000*	—
Kentucky	4,068,000	11/ 9/48	3,630,000†‡	—
Louisiana	8,053,000†	6/24/47	2,944,000	4,798,000
Maine	4,900,000†‡	11/ 8/48	2,350,000	2,400,000
Maryland	10,397,000†‡	3/11/49	9,377,000	—
Massachusetts	14,860,000†	7/24/47	4,860,000	10,000,000
Michigan	30,900,000†	10/ 6/48	8,217,000	20,400,000
Minnesota	11,325,000†	7/ 9/48	5,000,000	5,040,000
Mississippi	5,315,000*†	2/ 7/48	2,390,000	2,400,000
Missouri	3,250,000	2/25/49	3,250,000	—
Montana	545,000	3/22/48	317,917	—
Nebraska	2,363,000	9/30/47	1,325,000	1,038,000
Nevada	None	—	—	—
New Hampshire	3,469,000	7/30/48	2,325,000†	1,000,000
New Jersey	32,150,000	11/25/47	10,515,000	16,000,000
New Mexico	248,000	12/17/47	248,000	—
New York	49,000,000	—	—	49,000,000
North Carolina	5,139,000†	1/30/48	1,630,000	3,430,000
North Dakota	989,000	12/20/48	989,000	—
Ohio	11,335,000†	—	—	11,335,000
Oklahoma	5,900,000	4/19/48	2,900,000‡	3,000,000
Oregon	6,366,000†	1/ 8/48	1,554,408	4,116,000
Pennsylvania	25,000,000	—	—	25,000,000
Rhode Island	4,828,000†	3/31/48	1,200,000	3,628,000
South Carolina	2,620,000	12/ 9/48	2,535,000†	—
South Dakota	1,637,000	12/27/46	531,000	1,106,000
Tennessee	4,057,000	11/ 6/47	4,057,000*	—
Texas	6,142,000	—	5,484,000	—
Utah	1,776,000†	8/10/48	591,203	864,000
Vermont	2,253,000	5/23/48	2,253,000†*	—
Virginia	4,140,000	3/26/48	4,140,000	—
Washington	10,860,000	10/18/47	5,700,000	3,810,000
West Virginia	6,970,000	5/31/48	2,410,000†	3,950,000
Wisconsin	17,800,000	9/18/47	6,400,000	8,300,000
Wyoming	287,000	1/12/48	287,000	—
Total	$483,494,000		$200,398,828	$246,590,000

* Represents increases ordered by court on appeal from commission order.
† Represents total of more than one company request for rate increase action.
‡ Includes temporary or interim increase pending further action.

the nature of the original footnote. Where requests were denied in full by a commission, and a subsequent application made, the amount of the request denied in full was not included in the table but was explained in detail in the original footnotes. For example, this occurred in the case of Maine, $1,770,000, and Massachusetts, $7,000,000.

Column 4 of the table shows all increases made effective, whether by commission order, court order, by operation of statute, on a temporary basis, or under bond. Column 5 shows only those increases pending over and above those covered in column 4. Increases in effect on a temporary basis, included in column 5, occur in Arkansas, California, Florida, Kansas, Kentucky, Maine, Maryland, New Hampshire, Vermont, and West Virginia; and total $36,771,000.

Fast Telegrams

THE staccato click of the telegraph key in the office of the railroad station has traveled far and changed considerably during the past two decades.

Now, much of the work is done by an electric brain. Western Union Telegraph Company describes its new high-speed message centers vividly in its 1948 annual report. Four mechanized message centers located at Boston, Kansas City, Minneapolis, and Syracuse were placed in service in the latter part of 1948.

An operator transmitting a message from any office in the area served by one of these message centers simply types a routing symbol at the beginning of each telegram. That symbol causes an "electric brain" to route and transmit the message to its destination. Formerly telegrams were transmitted from their point of origin to one of a large number of relay stations. Under the new system many time-consuming steps have been eliminated.

Each telegram is typed only at the point of origin, from which it speeds to destination without manual retransmission.

Before the introduction of the new system, telegrams arrived at one of the relay stations where the messages were received in the form of words printed on tape, which were then pasted to telegraph blanks. Routing clerks next sorted the telegrams, and girls on roller skates carried them to the proper trunk-line operators. These operators retyped the messages to their destinations or, in many cases, to another station where the whole process had to be repeated. That type of operation is on its way out.

THE growth of the network mechanized message centers, and their interconnections is dramatically revealed in a series of charts which accompanied the company's report.

In the early part of 1949, two additional centers began operation at Detroit and Los Angeles. Installation work at New Orleans is reported to be well advanced and about ready for service. It is to be followed by completion of the last major center at Portland, Oregon. Each center serves an area of one or more states.

Atoms "Down Under"

FROM Australia we hear that communication lines will be laid far underground in preparation for possible atomic war.

The *Des Moines Tribune* has unearthed the information and it reports it as a special copyrighted item from Canberra, Australia, prepared for the *Tribune* and the *Chicago Daily News*

The report says that a team of defense experts is studying an elaborate plan to put key telephone and telegraph cables deep down in special atom-proof "channels."

Tentative plan is that the first of these special channels will be laid in the 80-mile stretch between Sydney and Bathurst. Also being reviewed is possible construction of secret telegraphic "nerve centers" and telephone exchanges underground at these principal cities.

Radar posts which could not be bombed out of operation also are planned.

Financial News and Comment

By OWEN ELY

Construction and Financing Programs

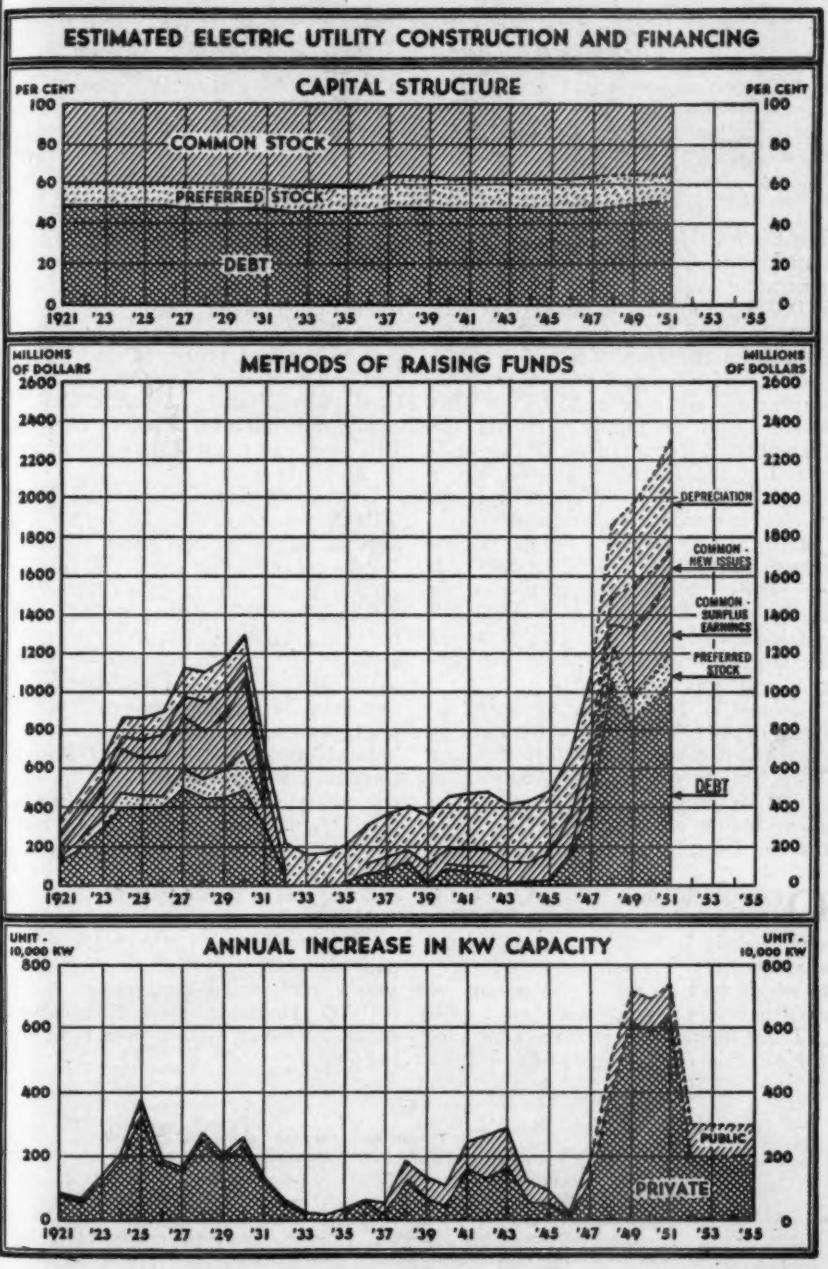
THE accompanying chart attempts to assemble the rather meager data available on the construction and financial record of the electric utility operating companies. During 1912-37 no balance sheet figures appear to be available except for the 5-year Census figures; from there on the annual FPC figures became available. The chart data have been drawn from various records and forecasts prepared by the FPC, EEI, *Electrical World*, etc., and where the figures did not represent the exact information desired, we have prepared our own estimates based on background data.

Back in 1912 the electric utility debt ratio was only 42 per cent, preferred stock represented 8 per cent, and common 50 per cent of the capital structure. By 1922, however, the debt ratio had risen to 49 per cent and preferred stock to 11 per cent, while the equity proportion had dropped to 40 per cent. Since that date the picture hasn't changed much. Between 1922 and 1937 the debt ratio dropped one point to 48, and the common stock ratio declined to 37, while the proportion of preferred stock rose to 15 per cent. During the next decade there was practically no change; debt dropped one point and preferred stock gained a point, it is estimated. But now there is a moderate upward trend in the debt ratio due to inadequate stock financing.

THE chart trend for 1937-47 should show an increase in the equity ratio (top section) due to the reinvestment of some $100,000,000 per annum or possibly $1.2 billion for the decade in new construction. But this amount was more than offset by plant write-offs ordered by regulatory commissions. The 1947 estimated figures are as shown below, before and after write-offs.

There has been a great deal of interest in the future trend of construction activity. Thus far the ambitious electric utility program does not appear to have been curtailed because of the current business "recession." However, most estimates were prepared before the year end or early in 1949, so that any recent changes of plan would not be reflected.

	As Reported (Approximate)		*Estimated before Write-offs*	
	Billions	*Per Cent*	*Billions*	*Per Cent*
Debt	$6.6	47%	$6.6	43%
Preferred	2.1	15	2.1	14
Common	5.4	38	6.6	43
Total	$14.1	100%	$15.3	100%


ESTIMATED ELECTRIC UTILITY CONSTRUCTION AND FINANCING
CAPITAL STRUCTURE
PER CENT
COMMON STOCK
PREFERRED STOCK
DEBT
METHODS OF RAISING FUNDS
MILLIONS OF DOLLARS
DEPRECIATION
COMMON - NEW ISSUES
COMMON - SURPLUS EARNINGS
PREFERRED STOCK
DEBT
ANNUAL INCREASE IN KW CAPACITY
UNIT - 10,000 KW
PUBLIC
PRIVATE
1921 '23 '25 '27 '29 '31 '33 '35 '37 '39 '41 '43 '45 '47 '49 '51 '53 '55

	Construction Expenditures	Depr. and Earn.	Method of Financing: Debt.	Preferred	Common
1946	$ 650	$520	$ 65	$ 30	$ 25
1947	1,237	600	335	95	170
1948	1,800	625	965	160	115
1949	2,000	650	850	115	350
1950	1,750	—	—	—	—
1951	1,500	—	—	—	—

The *Electrical World*, in its January 29th statistical issue, predicted an increase in generating capacity from the present 57,000,000 kilowatts to 90,000,000 kilowatts by 1955. This would require an estimated expenditure of some $15 billion exclusive of REA and Federal projects, which could add another $5 billion. This would mean practically doubling the present plant account of the private utilities. But the *Electrical World* figures seem based largely on orders on the books of electric equipment manufacturers. Of the 10,151,530 kilowatts estimated construction after 1951, only about 2,000,000 represents private construction while more than 8,000,000 is in Federal and municipal hydro plants, which of course are largely dependent on local and congressional appropriations.

Colonel H. S. Bennion, managing director of the Edison Electric Institute, on March 2nd gave a talk before the New York Society of Security Analysts, in which he presented the figure shown above for the electric utilities, construction and financing program (in millions).

OFFICIAL balance sheet figures for 1948 are not yet available. The Edison Electric Institute has compiled the amount of new financing as shown below, to which we have added the amount of surplus earnings reinvested.

These figures do not make allowance for possible further write-offs in 1948, but since the bulk of these adjustments had already been made in earlier years, the loss in plant account was probably comparatively small. The figures indicate the following ratios at the end of 1948: debt 49 per cent, preferred stock 15 per cent, common stock 36 per cent. Thus the bond ratio advanced 2 points and the equity ratio dropped 2 points from the 1947 level, as a result of the small amount of stock financing.

Colonel Bennion's estimate of $350,000,000 common stock financing for 1949 appears somewhat optimistic. Allowing for the conversion of about $175,000,000 surplus income into common stock equity, estimated 1949 financing would be 57 per cent debt, 8 per cent preferred stock, and 35 per cent common stock. On this basis 1949 capital ratios would be 50 per cent debt, 14 per cent preferred, and 36 per cent common equity.

In order to raise $350,000,000 through common stock financing in 1949, the electric utilities will have to issue about $30,000,000 a month. It seems a little dubious whether this amount can be realized. Since January 1st new money equity financing was as shown in table, page 501.

If common stock financing were to continue at about this rate (holding company sales are excluded, of course) the year's total would approximate $267,000,000. However, there is usually a summer "recess" which would cut into the total.

	New Financing (Bil.)	Surplus Earn.	Adjusted Amounts	Percentages
Bonds and Debentures	$965	—	$965	69%
Preferred Stocks	160	—	160	11
Common Stock	115	$172	287	20
Total	$1,240	$172	$1,412	100%

IN connection with rights financing, it is interesting to note that utilities such as Pacific Gas, Cleveland Electric, and Wisconsin Electric are adhering to the old-fashioned method—setting the subscription price 10 per cent or more below the market price so as to make the rights of real value and give present stockholders "a break." In other cases, however, of which Delaware Power & Light was a recent example, preëmptive rights of stockholders seem to be recognized only nominally. The offering price, when fixed by competitive bidding, is apt to be "right on the market." In fact in the Delaware offering the price was perhaps fractionally higher than the market, and the rights had only a fleeting value of 2 cents.

The intermediate practice of giving some value to the rights and paying brokers to solicit subscriptions seems to be gaining in popularity (Columbia Gas, General Public Utilities, etc.). In these cases a complex brokerage technique has developed for arbitrating between the old stock, the rights, and the "when issued" stock. This doubtless helps to advertise the issue and put over the sale.

1948 Electric and Natural Gas Earnings

ELECTRIC utility companies (Class A and B privately owned companies as reported by the FPC) made an excellent showing in the month of December. While kilowatt sales gained less than 9 per cent and revenues only 10.4 per cent, net income was up 14.6 per cent and the balance for common stock about 18 per cent. Fuel costs for the month were only 12.2 per cent over last year, compared with earlier gains up to 45 per cent (in June). Salaries and wages were 10.9 per cent above last year, and other expenses 9.2 per cent. Taxes gained 13.3 per cent, doubtless reflecting increased local assessments on new plant; but depreciation was practically the same as last year, with lower rates offsetting larger property. Interest on long-term debt gained 15 per cent, but this was largely offset by a substantial saving in "other income deductions." Operating income from utilities other than electric gained 1.6 per cent as compared with sharp declines earlier in the year.

Results for the calendar year 1948 were less impressive. Sales gained 9.3 per cent and revenues 12.4 per cent, but net income increased only 3.1 per cent. Fuel costs for the year were 30.6 per cent above 1947. Income of other departments was down 6.7 per cent, and miscellaneous income off 2.8 per cent. Dividends on preferred stocks increased 2.1 per cent for the year, and payments on common stock 3.7 per cent—the gain being surprisingly small considering the increased amount outstanding.

Date#	*Company*	*Kind of Offering*	*No. of Shs. (000)*	*Net Price To Co.*	*Amount (Mill.)*
Jan. 12	Gulf States Util.	Underwriting	278	$16.16	$4.5
Jan. 18	So. Indiana G&E	Underwriting	85	18.00	1.5
Mar. 1	Central Maine Power	*Rights 1-for-6	286	15.88	4.5
Mar. 14	Cleve. Elec. Illum.	Rights 1-for-5	465	33.50	15.5
Feb. 25	Pacific G&E	Rights 1-for-10	754	25.00	18.8
Feb. 16	Connecticut L&P	**Rights 1-for-8	163	50.00	8.1
Feb. 28	Delaware P&L	*Rights 1-for-5	232	17.64	4.1
Mar. 23	Oklahoma G&E	Rights 1-for-10	89	32.50	2.9
Feb. 23	Southwestern Pub. Ser.	*Rights 1-for-11	112	25.00	2.8
Mar. 22	Wisconsin Elec. Pr.	Rights 1-for-10	266	15.00	4.0
	Total				$66.7

*Underwritten.
**Rights were also issues to convertible debenture 3s due 1959 and the amount indicated may be divided between stock and debentures (the latter being underwritten).
#In the case of subscription rights, the date indicates the "stock of record" date.

NATURAL gas companies reporting to the Federal Power Commission showed a gain of 14.9 per cent in revenues, while net income increased 7.6 per cent in the calendar year 1948. Corresponding gains in the month of December were 13.6 per cent and 5.3 per cent, respectively. Interest charges for the gas companies increased to 29 per cent for the year and 43 per cent in the month of December, reflecting the industry's rapid growth. The amount invested in gas utility plant increased 12.7 per cent, but the reserve for depreciation and amortization was up only 3.8 per cent, so that net plant gained 17.1 per cent.

The Utility "Round Table"

IN a recent article in this department reference was made to the special meetings of utility officials sponsored by a large bank. These are the monthly "Round Tables" organized a year or so ago by Vice President Tom P. Walker of the Irving Trust Company. The customary procedure for these meetings is to invite a group of about fifteen senior utility executives, possibly one or two men representing regulatory agencies, and a few financial experts to exchange information and ideas. The program covers a 2-day period. At a typical session, March 31st and April 1st, brief talks were given by Assistant Vice President La Force of the Metropolitan Life Insurance Company, representing the viewpoint of the institutional investor; by Buren McCormack, managing editor, and Robert Selltitz, utility reporter, for *The Wall Street Journal*, representing the financial press; President Emil Schram of the New York Stock Exchange; Louis Brand, managing editor of bond services of Standard & Poor's Corporation; Vice President Sessel of the Irving Trust Company talked on "Trustee, Transfer Agent, and Kindred Services"; Henry Breck, vice president of Union Securities Corporation, explained the viewpoint of the investment banker; and John F. Childs, assistant vice president of the Irving, gave a behind-the-scenes discussion of the techniques employed in evaluating securities, emphasizing the importance of balanced corporate structures. The preparation of stockholders' reports and other publicity was covered by Dr. Julian L. Woodward of the Elmo Roper organization, and by Harold Young, a partner of Eastman, Dillon & Company. Finally the economic outlook was discussed by Vice President Wesley Lindow of the Irving Trust. Luncheon and dinner sessions provided further opportunities for the exchange of ideas and for brief talks on various phases of utility investment.

The "Round Table" has already become an institution. It represents the type of service that this bank is performing for the utility industry. Mr. Walker is to be congratulated for this valuable contribution to the development of sound policies and techniques in utility financing during a vital period in the industry's history.

Utilities Not Out of the Woods Yet—on Taxes

THE stock market is in the doldrums, continuing to weave back and forth in a narrow range, despite efforts by the Stock Exchange and other agencies to whip up public interest in equities as investments.* The moderate gain in utility prices is all the more welcome since it permits the utilities to catch up with some of the equity financing urgently needed to balance the big debt load being incurred for construction.

The recent relative market popularity of utilities seems due in part to improving earnings, and in part to the widespread feeling that they are good "defensive" stocks to hold in the event of a real recession in business. The increase in earnings, which results largely from declining fuel costs (the price of heavy fuel oils has now declined about one-third, and coal costs are also off moderately), could, however, be "nipped in the bud" by an increase in Federal taxes.

*As we go to press, the Federal Reserve Board has announced that margin requirements have been restored to 50 per cent which resulted in 1,800,000 shares' trading on March 29th.

It has been assumed recently that the administration's move for higher taxes has definitely failed, but this conclusion may be premature. Recently Senator Taft indicated that he might back a tax increase if there was a "substantial" government deficit by July 1st. Such an increase, he indicated, should be shouldered both by individuals and business. President Truman and his leaders still want $4 billion in new taxes, but some influential Democrats prefer to wait several months before making any decision. Meanwhile the administration is under pressure to start new boondoggling schemes to support employment. The move to arm European democracies may take a billion or so, in addition to ECA's 5 billions. Farm price props are proving expensive, and income payments may be lessened by declining business.

OPPONENTS of higher taxes for business, including the utilities which would be the hardest hit, should not relax their fight. The Chamber of Commerce of the United States recently warned that increased taxes would be highly dangerous, now that a recession is more feared than inflation. The proposed budget could be reduced substantially by direct action of Congress, or more slowly through adoption of the Hoover reorganization proposals which would eliminate much of the vast waste resulting from overlapping activities and inefficiency. But that's the hard way, and Congress prefers the easy way—taking another golden egg from the corporation goose.

If we must have increased taxes, an effort should be made to obtain offsetting advantages—either tax credits for the stockholder to avoid double taxation of dividends, or aid to the utility company through an undistributed profits tax. We quote as follows from the letter of a utility executive:

> I read with great interest your comment in the PUBLIC UTILITIES FORTNIGHTLY of February 17th on the matter of an undistributed profits tax. I am right in agreement with your conclusion that some reasonably mild form of this tax would be vastly preferable to an increase in normal rates, and, of course, to an excess profits tax. As a matter of fact, I had some discussions with officials in Washington in which I took the liberty of advocating this method of raising additional taxes (assuming any were necessary) about the middle of last December, and have been trying to watch developments as closely as possible since.
>
> My feeling is that American industries, as distinguished from the utilities, are not doing a good job as regards dividend policy and raising of new capital. The utility industry, on the other hand, has historically paid out a good portion of its earnings, and also for the most part seems to recognize the importance of liberal dividends in a period of expansion. However, industry in general seems to be trying to finance through retained earnings and is even going to the extent of trying to conceal earnings by special reserve charges for what is called excess depreciation, etc. The result, of course, is that dividends are absurdly low in relation to earnings, and when the stock sells, as it naturally would, at 2, 3, 4, or 5 times earnings, industrial management then claims that the cost of raising equity capital is too prohibitive, and they therefore must retain more earnings, which constitutes a vicious circle.
>
> It is, therefore, my personal feeling that a reasonably drafted tax which would permit companies to retain without penalty 30 per cent to 40 per cent of their taxable income (which in most cases would mean a somewhat greater percentage of their book income) would be helpful to the entire economy by causing greater dividend distributions, and consequently higher stock market prices. At present, the retained earnings are not commanding any values in the stock market, so that for practical purposes, we have had a profitless prosperity in regard to the stockholders, since the earnings cannot be translated into market value. They might as well not exist for practical purposes.

CURRENT UTILITY STATISTICS AND RATIOS

	Unit Used	Amount Latest Month	Amount Latest 12 Mos.	Per Cent Increase Latest Month	Per Cent Increase Latest 12 Mos.
Operating Statistics (January)					
Output KWH—Total	Bill. KWH	25.6	284.2	7%	10%
Hydro generated	"	7.8	—	21	—
Fuel generated	"	17.8	—	1	—
Capacity	Mill. KW	56.8	—	1	—
Customers, number	Mill.	40.8*	—	6	—
Fuel Use: Coal	Mill. tons	8.6	—	6	—
Gas	Mill. MCF	32.4	—	12	—
Oil	Mill. bbls.	5.4	—	21	—
Coal Stocks	Mill. tons	26.7	—	49	—
Sales, Revenues, and Rates (November)					
KWH Sales—Residential	Bill. KWH	3.9	40	13%	15%
Commercial	"	3.0	33	10	13
Industrial	"	9.2	107	8	9
Total, incl. misc.	"	22.5	252	9	9
Revenues—Residential	Mill. $	115	1,216	11	12
Commercial	"	86	948	11	13
Industrial	"	105	1,194	12	13
Total, incl. misc. sales	"	375	4,156	10	12
Revenues and Income (December)					
Elec. Rev., incl. misc. rev.	Mill. $	375	4,156	10%	12%
Misc. Income	"	6	117	2	D4
Expenditures (November)					
Fuel	"	71	771	12	31
Labor	"	74	809	11	11
Misc. Expenses	"	72	737	10	16
Depreciation	"	30	356	—	7
Taxes	"	58	699	13	7
Interest	"	19	211	15	11
Amortization, etc.	"	2	29	D48	D41
Earnings and Dividends (November)					
Net Income	"	70	663	15%	3%
Preferred Div. (est.)	"	8	97	1	—
Bal. for Common Stock (est.)	"	62	566	17	4
Common Dividends (est.)	"	30	393	4	4
Balance to Surplus (est.)	"	32	173	39	13
Utility Financing (February)[2]					
Bonds	"	102	—	15%	—
Stocks	"	2	—	D940	—
Total	"	104	—	D15	—
Life Insur. Co. Investments (March)[3]					
Utility Bonds	"	—	155	—	D33%
Utility Stocks	"	—	2	—	D74
Total	"	—	157	—	D33
Per Cent of All Investments	"	—	14%	—	D15

*At end of January. D—Decrease. [2]Data for all utilities (electric, gas, telephone, etc.), including refunding issues. [3]January 1 to March 19, 1949.

RECENT FINANCIAL DATA ON GAS COMPANY STOCKS

		3/23/49 Price About	Indicated Dividend Rate	Approx. Yield	Share Earnings 12 Mos. Ended	Current Period	Previous Period	% Increase	P-E Ratio
Natural Gas—Retail									
C	Arkansas Natural Gas	7	$ .40	5.7%	Dec.'47	$ .80	$ .39	107%	8.8
O	Atlanta Gas Light	18	1.20	6.7	Dec.'48	1.71	1.87	D 9	10.5
S	Columbia Gas System	12	.75	6.3	Dec.'48	1.04	1.25	D17	11.5
C	Consol. Gas Util.	12	.70	5.8	Jan.	1.72	1.17	47	7.0
S	Consol. Natural Gas	45	2.00	4.4	Sept.	3.75	4.49	D16	12.0
O	Houston Natural Gas	17	.80	4.7	July	1.42	1.29	10	12.0
O	Indiana Gas & Water	16	1.20	7.5	Jan.	1.42	1.36	4	11.3
O	Kansas-Neb. Nat. Gas	15	1.00	6.7	Dec.'48	1.70	1.36	25	8.8
C	Lone Star Gas	23	1.20	5.2	Dec.'48	2.27	1.87	21	10.1
O	Mission Oil	37	2.20	5.9	Dec.'47	2.04	2.92	D30	18.1
S	Montana-Dakota Util.	11	.80	7.3	Dec.'48	1.18	1.22	D 3	9.3
C	National Fuel Gas	9	.60	6.7	Dec.'48	.61	.97	D37	14.8
C	Okla. Natural Gas	42	2.00	4.8	Jan.	4.62	3.88	19	9.1
S	Pacific Lighting	52	3.00	5.8	Dec.'48	3.96	4.04	2	13.1
C	Pacific Pub. Serv.	17	1.00	5.9	Dec.'48	2.43	1.91	28	7.0
C	Rio Grande Valley	2	.12	6.0	Dec.'48	.20	.21	D 5	10.0
O	Rockland Gas	25	1.70	6.8	Dec.'47	3.36	3.30	2	7.4
O	Southwest Nat. Gas	3	.20	6.7	June	.26	.27	D 4	11.5
O	Texas Pub. Serv.	27	1.60	5.9	Jan.	2.64	2.27	16	10.2
S	Washington Gas Light	24	1.50	6.3	Nov.	1.89	1.00	89	12.7
	Averages			5.9%					10.8
Mixed Gas—Retail									
S	Laclede Gas Light	6¼	$ .20	3.1%	Sept.	$ .92	$ .73	26%	7.1
O	Minneapolis Gas	13	.80	6.2	Sept.	.95	1.12	D15	13.7
O	National Gas & Elec.	7	.60	8.6	Dec.'47	1.64	1.24	32	4.3
S	Peoples Gas L. & C.	105	6.00	5.7	Dec.'48	8.72	10.03	D13	12.0
	Averages			5.9%					9.3
Natural Gas—Wholesale and Pipe Line									
S	El Paso Nat. Gas	76	$3.60	4.7%	Nov.	$7.08	$4.98	42%	10.7
O	Interstate Nat. Gas	23	2.00	8.7	Dec.'47	1.71	1.70	—	13.5
O	Missouri-Kansas P. L.	24	1.00	4.2	Dec.'48	1.32	1.27	4	18.2
S	Northern Nat. Gas	35	1.95	5.6	Dec.'48	3.12	3.23	D 3	11.2
S	Panhandle East. P. L.	56	3.00	5.4	Dec.'48	4.70	4.49	5	11.9
S	Southern Nat. Gas	32	2.00	6.3	Dec.'48	3.15	2.66	18	10.2
O	Southern Production	9	—	—	June	.29	.35	D17	—
O	Southwest Gas Producing .	9	—	—	Dec.'47	.14	—	—	—
O	Tenn. Gas Trans.	26	1.40 & Stk.	5.4	Dec.'48	1.78	1.42	4	14.6
O	Texas East. Trans.	14	—	—	Dec.'48	1.18	—	—	11.9
	Averages			5.8%					12.8
Manufactured Gas—Retail									
O	Birmingham Gas	14	$ .60	4.3%	Sept.	$1.43	$ .83	72%	9.8
C	Bridgeport Gas	21	1.40	6.7	Dec.'47	1.69	1.72	D 2	12.4
O	Brockton Gas Lt.	12	1.00	8.3	Dec.'47	1.00	1.12	D11	12.0
S	Brooklyn Union Gas	26	1.00	3.8	Dec.'48	1.21	D .29	—	21.5
O	Hartford Gas	31	2.00	6.5	Dec.'48	1.85	2.10	D12	16.8
O	Haverhill Gas Lt.	17	1.60	9.4	Jan.	1.67	1.41	D 5	10.2
O	Jacksonville Gas	31	1.40	4.5	Dec.'47	5.64	5.47	5	5.5
O	Kings County Lighting	4	—	—	—	—	—	—	—
O	Providence Gas	10	.60	6.0	Dec.'48	.73	.64	14	13.7
O	South Jersey Gas	7	—	—	Dec.'48	.38	.15	153	18.4
	Averages			6.2%					13.4

D—Decrease or deficit. E—Estimated. C—Curb Exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange.

What Others Think

Higher Rates for Heating Gas

JAMES F. OATES, JR., chairman of Peoples Gas, Light & Coke Company, Chicago, recently told a banking group that higher rates on gas for heating homes require serious consideration by utilities and regulatory agencies. The central states group of the Investment Bankers Association of America heard Mr. Oates assert that such action must be considered to protect the financial integrity of utility companies, and to prevent an exhaustion of natural gas through an uneconomically low schedule of rates.

Following is a brief digest of the ideas presented by Mr. Oates:

Natural gas once was considered a luxury fuel, but now it costs the heating customer much less than oil or a good grade of coal in many cases. The basis for a prompt adjustment in gas space-heating rates becomes apparent when the current cost of incremental supplies is considered.

Not so very long ago, gas could be bought in the field for relatively little—3 cents a thousand cubic feet. Now the asking prices of the producing companies in the great producing reserves in Texas and Louisiana run from 8 to 12 cents. Also, the contract provisions sought by producing companies in the field provide operating companies with tough economic questions.

In Chicago, it now costs about $119 a year to heat a 6-room house with gas. This compares with about $185 for fuel oil and $142 for a good grade of coal. There has been an unprecedented demand for gas, largely from potential space-heating customers. Utilities have been unable to meet these demands.

IF Peoples Gas were to saturate the space-heating load in Chicago, it would be necessary to build ten additional pipe lines from natural gas fields in the Southwest. Also, if the demand is to be supplied, the following three steps must be taken:

(1) Give consideration to increasing space-heating rates.

(2) Provide other means, by storage or otherwise, to meet peak winter requirements.

(3) Develop markets for "off-peak" and interruptible sales of gas to industrial and other users.

Peoples Gas will require additional capital funds in connection with a current expansion and development program. However, a financing program will not be resolved until a plan of the company for a third pipe line from the Southwest to Chicago is developed further.

—G. M. W.

Federal Power Commission Reports

FPC says in its recent annual report that the year ended June 30, 1948, completed one of the most active years in the 28-year history of that agency.

Sharply mounting demand for electric power and natural gas beginning about the middle of 1946 continued on to new high levels in 1948. This development brought additional and complicated duties to this agency, which administers the Federal Power Act and the Natural Gas Act.

There were many hearings held during the year on emergency service rules of some of the larger natural gas companies serving the Middle West and the Appalachian area where available supplies of the fuel were far short of seasonal demands.

One of these hearings involved a total of 51 utility customers and 26 industrial customers of the pipe-line company and extended over a period of thirteen days. Another was participated in by 6 pipeline companies, 56 distributing utilities, and 26 industrial consumers. This latter hearing continued for forty-five days and involved a total of 97 witnesses presenting approximately 7,600 pages of testimony and 210 exhibits.

THE FPC report states that the commission staff worked on a total of 1,150 rate filings submitted during the period by electric power and natural gas companies subject to the agency's jurisdiction.

Considerable attention has been given to utility accounting problems. Inflation of the plant account was given special notice. Uniformity in accounting systems was a primary aim.

Accounting studies of electric companies are nearing completion. Now the agency is planning for an early intensification of activity on the accounts of natural gas companies.

SURVEYS of the water-power potentialities of the nation's major river basins were carried forward by the FPC staff in many parts of the country. Recommendations were made during the year regarding the hydroelectric potentialities of 23 flood-control and navigation projects to be constructed by the Army Corps of Engineers and 10 irrigation projects scheduled for construction by the Bureau of Reclamation. They involve an aggregate of about 1,315,000 kilowatts of ultimate installed generating capacity.

During the year the number of applications received from electric utilities for authorization to issue securities under the Federal Power Act rose to a new high level of 38. This contrasted with 16 such applications received in 1947 and 6 in 1946.

In addition to a detailed report of the commission's activities containing statistics of the industries involved, the 158-page report contains an appendix showing individual projects under major license and a separate financial statement revealing the proceeds derived from licenses issued by authority of the Federal Power Act.

The document is the twenty-eighth annual report of the Federal Power Commission and is for sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Price, 35 cents.

Power Situation in Quebec

QUEBEC has the largest per capita development of hydroelectric power in the world. That fact is not generally known in this country, but it comes from the good authority of James Wilson, president of the Shawinigan Water & Power Company in Montreal.

In an article published in the *Montreal Gazette*, Mr. Wilson reveals that his company has many problems similar to those bothering some companies in the states. These include the need for more capacity, mounting costs, and rural electrification.

With respect to the need for more capacity, he said:

> . . . During the past year, a low rainfall without precedent aggravated the situation in Ontario and in some parts of Quebec. In Ontario, black-outs and power rationing had to be enforced, while in Quebec the situation was met through the acceptance, by principal users of bulk power, of 10 per cent reductions in deliveries. With normal rainfall conditions, there would have been no cut-backs in Quebec, and On-

tario probably could have passed the winter with a few isolated brown-outs, but even so the need of spare generating capacity would have been indicated.

Those who have criticized electric utility management for power shortages forget two principal factors in the situation: droughts and the lack of construction material. Management could do nothing about the first, and the second was an unavoidable postwar difficulty.

Now it is reassuring to see that fair progress is being made in both provinces toward correcting the problems. For instance, in Quebec it is well understood, not only by the government but also by the wood-using industries directly affected, that the reliability of a river's flow depends upon the forest cover on its watershed and that, therefore, forest conservation is of supreme importance to the hydroelectric industry. There can be no complacency regarding measures for the protection and preservation of the forests.

MR. WILSON stated definitely that higher costs have reached the point where there must be increases in rates. He feels that gone is the day when further reductions can be made in the sale prices of electricity. The article gives significant facts, some of which are quoted below:

> During the past decade, every factor in the cost of producing electricity has risen, without exception. For instance, wages are 60 per cent higher than ten years ago, and materials 120 per cent. Taxes are up 137 per cent, and fees to governmental bodies have increased 40 per cent.
>
> Those increased costs are not confined to Quebec; they are common to the publicly owned system in Ontario and to systems in all states of the Union. In fact, they have become so generally the rule that in many of the jurisdictions outside Quebec, governing bodies for some time past have been authorizing upward revisions in rate schedules.
>
> At present, on the basis of 1939 value, a dollar's worth of electricity is priced at about 38 cents.
>
> It is recognized that electrical services cannot be maintained unless they are properly paid for, and also that an enlightened and progressive management of such services cannot be maintained unless an adequate return upon invested capital is assured. Additional generating facilities, with extensions and improvements in distribution systems to meet the growing demands of all classes of customers—rural as well as urban—cannot be financed unless new capital is attracted to the electrical industry. That fact is so obvious that increases in rates are the order of the day everywhere.

With respect to rural electrification, Mr. Wilson says that steady progress has been made. He points with pride to the fact that the breadth of the company's facilities makes rural electrification in Quebec compare favorably, in efficiency and economy, with that in any similar farming area on the continent. However, he indicates the limits of such activities in the following paragraph:

> It is true, however, that the very extent of progress in the past is now colliding with the law of diminishing returns; areas in this Province which still lack electric service are in the main so sparsely settled or so distant from sources of supply that further extensions of the systems must be slowed down or even postponed. What the private power companies have already accomplished has been of immense value, but they cannot continue indefinitely to provide extensions of lines into distant or thinly populated areas where heavy losses are inevitable. Some form of government subvention will be necessary before complete electrification of the agricultural areas of the Province will be possible.

Mr. Wilson closed his article with an optimistic remark as to the future aspects of the hydroelectric utility industry in the "Ancient Province of Quebec." He men-

tioned the area's "white coal" reserve of more than seven million horsepower in addition to the nearly six million already developed.

Cisler on Electric Power

THE story of expansion in the electric utility industry should be better known to millions of Americans. That is the firm conviction of Walker L. Cisler, executive vice president of the Detroit Edison Company. He recently nailed his point down in an address before two engineering groups in Detroit.

The address indicates that Mr. Cisler feels strongly on the subject of companies telling their stories in their own territories. The speech dealt particularly with facts related to an economic balance between steam and water-power plants. It tied in ideas on political philosophy and the situations introduced by atomic energy in this country and the Marshall Plan in Europe.

Water versus Steam

On this subject, Mr. Cisler said in part:

I believe emphasis should be placed on the need of maintaining an economic and coördinated balance, from an operating standpoint, between thermal and hydraulic generating capacities in order to assure economical and adequate electric power supply in the face of adverse precipitation. This need is attested to by the fact that in most instances where long continuous use restrictions have occurred, it has been usually in those areas which are predominately hydro.

I believe in the development of water-power resources to the extent that they are economically sound and bear their full share of the costs involved. There are a number of influencing factors such as flood control, irrigation, and navigation, which may be deciding in justifying the development of a project.

In every case, there should be a clear and full understanding of the facts involved so that the public may be properly enlightened. Only by so doing can there be a constructive approach to the problem of government expansion in the electric power field. In certain areas government has now assumed responsibility for the development of our water-power resources.

It is extremely important also to the economic and social stability of the country that areas of hydro generation be fully coördinated in operation with areas of thermal generation wherever this is physically possible both within broad areas or between adjacent areas. There are already outstanding examples of accomplishment of this kind of coördination. Only by such measures can maximum benefits to the country as a whole be obtained. This may even transcend country boundaries as in Europe.

IT was pointed out that water-power developments, because of their natural setting and picturesqueness, have a distinct advantage of popular appeal over the more prosaic thermal installations. The utility executive suggested that the coal mining industry might help bring out some of the less obvious appeals which lie hidden in the whole train of events leading from the mining of solid fuels, their transport to the point of consumption, and, finally, their utilization in great thermal electric generating plants for service to the homes, farms, shops, and industrial enterprises. Mr. Cisler stated:

> . . . coördinated operations of interconnected utility systems proved to be one of the major resources of the United States in providing adequate power supply for war production and for postwar needs. In our own large electrical systems, it was found that by pooling reserves, taking advantage of diversity of loads between systems, coördinating steam and hydro systems and the like, we could increase the

"THIS BEING MONDAY IS HARDLY A SATISFACTORY EXPLANATION OF THIS SWARTZ!"

over-all availability of power from existing power plants by as much as 5 to 10 per cent.

Political Philosophy

Mr. Cisler emphasized that we must be alert to the danger threatening our fundamental concepts of life, liberty, and the pursuit of happiness. "Our efforts and assistance to the nations participating in the European Recovery Program are definitely helping to stop the advance of the Iron Curtain. The cold war is being won in Europe against a tremendous attempt to break down our social, physical, and economic strength," he said.

Atomic Power

THE question of the prospects for the use of atomic heat for producing electric power was discussed briefly by Mr. Cisler. He said in part:

> In planning the addition of generating capacity to the electric power systems the use of conventional sources of thermal energy—namely, gaseous, liquid, and solid fuels—is envisioned for a long time to come. It is not expected that thermal energy from heat power reactors will be available in appreciable quantities for extensive use in industrial plants for many years to come. The use of such reactors as a source of heat energy must, if they are to take their place along with the conventional sources of heat energy, satisfy the following:
>
> They must be a practical reality. Their relative economy must com-

pare favorably with other sources of thermal or hydraulic energy.

They must be safe from a practical operating standpoint.

Their use must be defined either as a government monopoly, or as available to private enterprise as well.

Time alone will tell when and under what circumstances these will be possible. Certainly the vast program of reactor development which the Atomic Energy Commission now has under way should be productive of results which will determine the path of progress in this field. For the present, we are safe in assuming that new electric generating installations, now being made, will undoubtedly serve their economic life before this new source of heat energy will have a large influence over future developments.

Mr. Cisler presented the above ideas in an address, entitled "Expansion in the Electric Utility Industry," at a fuel engineering conference of Appalachian Coals, Inc., in coöperation with the Detroit section of the American Society of Mechanical Engineers, at Detroit, March 9, 1949.

Unique Scholarships for Electrical Workers

A GROUP representing both management and labor in the electrical industry has initiated a broad program providing 5-year scholarships at Columbia University for sons of New York city electrical workers.

The program was announced by A. Lincoln Bush, chairman of the Joint Industry Board of the Electrical Industry, and president of the Belmont Electric Co., Inc., 570 Lexington avenue. In order to be eligible for the scholarships, applicants must be sons of electricians who are members of the pension plan of the Joint Industry Board.

The project will provide funds to send two students annually to Columbia College, the undergraduate school for men at the university. Upon completion of three years of libertal arts studies at the college, the students will transfer to Columbia's School of Engineering for an additional two years of schooling in electrical engineering. Each student will receive a total of $4,200.

Dr. Harry J. Carman, dean of Columbia College, has given the plan high praise. It is expected that about 750 high-school students or graduates, sons of the workers in the pension plan, will be eligible this year to apply for scholarships, which will include full tuition, books, and fees.

From the list of the students who apply, ten to fifteen will be selected by Columbia to enter a final competition. The selection will be made after the college considers the boys' qualifications on the same basis as all applicants are screened. The final competitors will then be asked to take a college entrance examination. The two most successful candidates in this group will be awarded the annual scholarships.

THE program is one phase of the extensive pension, hospitalization, and benefit program established in 1941 by the Joint Industry Board for the purpose of protecting members of Local Union No. 3 of the International Brotherhood of Electrical Workers and their families.

A thumbnail sketch of Mr. Bush is interesting here. He entered the electrical business in 1900 and has been particularly active in labor relations work.

At present, he is vice president of the National Electrical Contractors Association; custodian of the National Labor Relations Committee of the electrical contracting industry; chairman of the

board of the New York State Association of Electrical Contractors and Dealers; chairman of the Joint Industry Board of the Electrical Industry; and chairman of the Bush Committee of the Joint Industry Board. He has been a member of the National Panel of Arbitrators of the American Arbitrators Association for twenty-six years.

One of the scholarships is named for Mr. Bush. The other is called the William A. Hogan Scholarship. Mr. Hogan is a member of the Knights of Labor, Charter No. 253, local assembly of district assembly 2468, Knights of Labor. He was elected international treasurer of the International Brotherhood of Electrical Workers in 1909 and still holds that office.

He was elected financial secretary of Local Union No. 3 in 1903 and still holds that office.

Utility Safety Seminar

A SUCCESSFUL group meeting held by Ebasco Services Incorporated in coöperation with New York University produced and presented new techniques and tools to advance efforts in accident prevention.

The seminar, held in New York city for a 2-week period, had as its primary purpose the teaching of Ebasco client company personnel the most modern practices in the field.

Approximately one-half of the time was spent at the university at Washington square and the other half in field visits, instructional work, and conferences at Ebasco offices. Subjects of the "course" included effective speaking, effective relations (practical psychology), conference leadership and safety training, utility safety programs, motor vehicle safety, visual aids, fire prevention and protection, field visits, and an association panel.

Field trips included visits to the training school of the New York Telephone Company at Long Island City; to plants and offices of Consolidated Edison Company of New York; and to Walter Kidde Company at Belleville, New Jersey, for demonstration of first-aid fire extinguishing equipment. The association panel, a unique feature of the seminar, was held at headquarters of the American Gas Association, 420 Lexington avenue.

Representatives of many associations outlined the work their groups were doing in the field of accident prevention. Participating were the American Gas Association, Edison Electric Institute, American Transit Association, American Institute of Electrical Engineers, American Society of Safety Engineers, and the National Safety Council.

The courses at the university were under the auspices of the Department of General Education, and the entire seminar was directed by the Ebasco safety consultant.

Attending the recent seminar were representatives from nine companies, primarly Ebasco clients.

Notes on Recent Publications

Federal Power Commission Laws, etc. Elmer A Lewis, superintendent of the document room of the House of Representatives, has brought up to date this valuable compendium of laws relating to the Federal Power Commission and Federal hydroelectic power development. The document is 168 pages in length. The first 50 pages are devoted to all laws and amendments relating to the Federal Power Act, approved August 26, 1935. It starts with the act of the 66th Congress, approved June 10, 1920, creating the Federal Power Commission.

The remainder of the publication deals with Federal power development laws. This section starts with the act creating the Boulder dam, approved December 21, 1928. It ends with the law of the 80th Congress,

approved June 26, 1948, authorizing an emergency fund for the Bureau of Reclamation to assure continuous operation of irrigation and power systems. The publication may be obtained from the Superintendent of Documents, Washington, D. C. Price 15 cents.

AGA Lists Publications. It takes 19 pages of printed matter to list the important publications of the American Gas Association. The publication is entitled "Publications List, January, 1949." Listed are articles, reports, pamphlets, and books of current interest to the gas industry, whether they be published originally in this decade or last. Twenty-three major subjects represent the scope of the publications, ranging from "accident prevention" to "testing laboratories." The price of each item is given. Write American Gas Association, 420 Lexington avenue, New York 17, New York.

Central Valley Project. Forty dams and reservoirs, 28 hydroelectric plants, and 11 main canals give a figure-word sketch of the ultimate reclamation undertaking known as California's Central Valley Project. A capable feature writer by the name of Robert de Roos from California has written a popular book about the project. It is called *The Thirsty Land.*

As the author says in his preface, the book is not original research. It is a compilation of the history and side lights, issues and policies involved in this important project. Mr. Roos says that he has tried to be objective, but he admits that bias has crept in from time to time. He supports the ideas and policies of the U. S. Bureau of Reclamation; but is opposed to the Army Corps of Engineers building irrigation and power dams and reservoirs; thinks the Army is on the side of the "interests." He wishes that in this case the Army "would go away and shoot their guns."

No objection is raised by the writer to state management and operation of the project if some way could be suggested to effect the changeover from Federal to state. However, he sees no "sensible plan for the change."

What Mr. Roos says about the Pacific Gas and Electric Company must be presented here in direct quotes: "And certainly I am against the efforts of the Pacific Gas and Electric Company to get control of the electrical energy generated by the project's power plants. Water is a vital resource in California and from that water comes an almost inexhaustible supply of power. This power belongs to the people of California and of the United States. It should never be controlled by a privately owned utility, not even a utility regulated by a rate-making body."

There are two chapters called "Power Politics," and "Power Politics Compounded," which will be of interest to any utility man although at times he might find himself spitting silver, gold, or enamel produced by gnashing of teeth. They present the blow-by-blow account of the fight between PG&E and the Bureau of Reclamation. THE THIRSTY LAND, by Robert de Roos. Stanford University Press, Stanford University, California. 265 pages. Price $4.

Ethical Contracting. Business ethics with respect to contracting for construction work come to us in the form of a well-written 83-page book called *Contracting As a Profession.* It was written by Frederic W. Lord, president and chairman, Lord Electric Co., Inc., New York city; published by Richard R. Smith, New York, 1949. The author calls his method of contracting the "professional plan." The basic ideas behind the plan are: (1) experience, (2) efficiency, and (3) integrity. Thus, Mr. Lord holds that in competitive bidding the purchaser should "not blindly select the lower bidder but rather select the lowest and reputable bidder." In the case of cost-plus contracts, he asserts that the contractor chosen should be judged by his reputation, skill, efficiency, high credit standing, experience, and integrity. The book contains a suggested bill prepared for introduction to Congress. The author describes his "professional plan" as follows:

1. Selection of an honest and efficient contractor with whom to negotiate. Questionnaires designed to elicit facts regarding the history, financial responsibility, and general standing of those under consideration may be helpfully used as a guide to the selection of the best qualified contractor.

2. The selected contractor will submit an outside lump sum detailed estimate, including all elements of cost, to be checked and approved by the architect, consulting engineer, and general contractor. If the cost of the work covered by the estimate exceeds the estimate, the excess is borne by the contractor.

3. A reasonable profit, in terms of a percentage of cost, will be mutually agreed upon, the same rate to apply to all changes and extras.

4. Audit of contractor's books, before final payment, by a CPA or the owner's auditor.

5. One hundred per cent credit to the owner on all savings made under the outside price.

Morality in business contracts is the author's main theme. The suggested legislation, in the form of a proposed bill for congressional action, was drafted by Lloyd K. Garrison, one-time dean of the University of Wisconsin Law School, former chairman of the War Labor Board, and now a lawyer in New York city.

Pennsylvania Railroad's Centennial. M. W.

Clement, president of the Pennsylvania Railroad, asserts that the company's former policy of putting a dollar back into property for every dollar paid to stockholders in dividends contributed more than any other factor to the company's ability to pay its stockholders a return on its investment in every year of its history. Now, this policy is impossible to continue he said with regret in a foreword to the company's recently published *Centennial History*. However, he hopes for an understanding change in regulatory attitude which would allow the company and other railroads to return to their traditional policy retaining an appreciable portion of earnings in the business. The centennial book is a volume of 705 pages of text, with numerous illustrations and maps and 99 pages of appendices devoted to statistical records and tabulations. The book is divided into ten parts. The first, "Background and Beginnings," covers the formative and early construction period, including the administrations of the first two presidents, and carrying the story down to 1852. The book closes with the end of World War II. Copies of the history will be available to the general public at $3.50 each, at Union News Company stands in the principal stations on the railroad and at Doubleday, Doran bookstores.

Trends in State Taxes. The Tax Foundation, 30 Rockefeller Plaza, New York city, maintains complete records on all important factors relating to taxation. Since, in 1949, there is a definite tendency for state and local governments to tap new sources for revenue and to increase current taxes, many utility treasurers and tax experts may wish to obtain more information on state taxes. The foundation has published what it calls Project Note No. 20, "Recent Trends in Major State Taxes," 1941-47. The 99-page booklet presents much valuable background material and statistics for practically all types of state taxes, much of it classified by states.

Promotion of Planned Lighting. Edison Electric Institute has launched another of its effective and intensive promotional campaigns to increase revenues of electric light and power companies. It is aimed at five major markets — homes, stores, offices, schools, and industries.

The current campaign is part of the general planned lighting program sponsored by EEI, with educational materials prepared by Better Light Better Sight Bureau. The institute has sent to commercial vice presidents and sales managers of power companies a folder containing samples of new promotional aids. Included are three mailing pieces aimed directly at food stores, which account for the largest portion of the commercial lighting market. This is the first time in the general program that efforts have been slanted at a specific store field.

The new material also includes a folder selling the need for early consideration of lighting when building a home. In addition there are: (1) Two pieces produced by the Better Light Better Sight Bureau with an educational approach; (2) a booklet presenting home-lighting modernization ideas for the low- and medium-income family; and (3) a folder stressing the importance of proper light for children doing homework.

Accompanying the actual samples of promotional aids are instructions as to how to use them and tie them into the program.

A State Commission's Work. For persons not familiar with the many and varied duties of state regulatory commissions the fifty-ninth annual report (1948) of the public utilities commission of South Dakota is enlightening. This 271-page report gives full details on the commission's activities. A glance at the index in the back shows that the majority of cases considered involved railroads, motor carriers, and telephone companies. Grain elevators, warehouses, and mills also come under the jurisdiction of the commission and their regulation represents an important portion of the commission's work. For example, 845 licenses were issued to elevators, warehouses, and mills, of which 566 were bonded warehouses, the bonds of which were filed with and approved by the commission, and to which separate storage certificates were issued. On all controversies, 129 formal hearings were held at different points in the state during 1948. A great many complaints were received, handled, and disposed of, although not formally docketed. Also, the commission has participated in hearings before the Interstate Commerce Commission and has taken part in conferences with the ICC and commissions of other states and agencies.

All telephone and railroad companies are required to render annual reports to the commission, in which are shown complete operating results, the amount of plant and equipment, and the financial standing. The records show that there are 704 telephone companies operating. These reports are checked by the engineer and accountant and, where found to be inaccurate, corrections are required. Help is frequently extended to the smaller companies in making and correcting the annual reports.

The reports of the railroad companies, of which there are nine in the state, give complete information of their operating results. The commission has a detailed valuation of all railroad property within the state, including right of way, profile, and station maps.

Many complaints and inquiries in connection with telephone and railroad matters which come before the commission are adjusted informally. Sometimes this is accomplished by correspondence and at other times through an informal investigation of the matter in controversy.

The March of Events

In General

EEI Head Reports on New Capacity

NEW production facilities installed by electric companies will total 995,368 kilowatts of generating capacity for the first three months of 1949, it was announced last month by Ernest R. Acker, president of the Edison Electric Institute.

Additions in January of this year by the companies totaled 292,620 kilowatts; in February, 281,736 kilowatts. March installations are due to total 421,012 kilowatts.

Large generating units added by the business-managed electric companies in January included a 100,000-kilowatt installation by Pacific Gas and Electric Company in California; a 60,000-kilowatt addition in Michigan by Consumers Power Company; 40,000 kilowatts in New York by Rochester Gas & Electric Corporation; and 22,000 kilowatts in New York by Rockland Light & Power Company.

Two 60,000-kilowatt installations were completed in February, one by Ohio Public Service Company, the other by Philadelphia Company. Monongahela Power Company, in West Virginia, installed 50,000 kilowatts during the month.

Scheduled for March were installations of 60,000 kilowatts by each of three companies: Alabama Power Company, Dayton Power & Light Company, and Consolidated Edison Company of New York. Indianapolis Power & Light Company added 40,000 kilowatts in Indiana.

As 1949 moves into its later months, installation of new capacity will accelerate, the greatest activity occurring during the last portion of the year in anticipation of the customary December peak period.

Synthetic Fuels Expansion Called Vital

NATIONAL security and the country's standard of living depend on an all-out program of resource development, especially in the fields of synthetic fuels and water power, Julius A. Krug, Secretary of the Interior, declared recently.

Urging rapid development of synthetic liquid fuels from coal, and of extraction of fuels from oil-bearing shale, the Secretary said the United States would face a "transportation collapse" should our foreign supply of oil be shut off. He recommended the development be conducted by private industry with "government encouragement."

As for water power, Mr. Krug advocated a 20-year development program costing up to $15 billion, including the St. Lawrence power and seaway project.

The Secretary's plea for resource discovery and expansion, coupled with most rigid conservation of all existing natural resources, came in an annual report to the President.

"Unless future generations are to face a declining standard of living, we must rely more heavily on our inexhaustible supplies, stop the waste of irreplaceable materials, and find and develop additional resources as fast as possible," Mr. Krug told President Truman.

While the report laid special stress on petroleum and water development, it also recommended restrictions on the use of such scarce basic minerals as copper, lead, and zinc "to protect the nation's

economy from the effects of critical shortages."

Petroleum, however, was the most critical energy source problem because "it powers the nation's transport system and is the key to national defense to a far greater extent than in any other nation," said the Secretary. He noted that the country was using its scarest fuel, oil, "more liberally" than the more plentiful fuels, coal and water.

Mr. Krug said the United States could not count on development of atomic or solar energy in the foreseeable future to provide the vast power needed to keep the country's transport rolling, and added it was "dangerous" to depend on foreign sources of oil, "particularly halfway around the world." He recommended that oil-producing states adopt conservation practices, and that oil reserves in submerged lands off the continental mainland be explored.

The Secretary's 20-year water development program set a goal of at least 40,000,000 kilowatts of hydroelectric power. He said the Federal government should build facilities to produce 30,000,000 of this total at a cost running from $12 billion to $15 billion.

He estimated the combined cost of the St. Lawrence seaway and power development at $966,678,000, of which the United States' share would be $605,203,000 and Canada's $361,475,000. The projected output is 6,500,000 kilowatt hours.

The St. Lawrence project, Mr. Krug said, was needed not only for power, but also "to bring the newly important iron ore from Labrador and South America to American steel plants."

Governors' Conference

ACTING on the belief that no single New England state can stand alone economically, the six governors of that region voted unanimously last month at a meeting in Boston to request Congress and their own legislatures to authorize creation by a 10-year compact, of a New England Development Authority to chart the growth of power and other resources, as well as industrial expansion of the area.

Chairman John O. Pastore announced the sweeping plan, which is fundamentally an outgrowth of agitation for development of hydroelectric power within New England. But it was reported to go much further than that.

Under terms of the vote at a session of the New England Governors' Conference, each governor pledged himself to urge upon his legislature the necessary law to create a 6-member authority to fight not only for New England interests, but for uniformity of action among the states.

The conference also unanimously adopted a resolution directing each of the public utility regulatory agencies within the six states to join in a permanent association of public utility agencies.

Governor Pastore said the agency would coöperate with the Federal Communications Commission and other Federal regulatory agencies on common problems.

California

Commission Budget Cut

THE assembly ways and means committee last month cut $33,656 from the state public utilities commission budget despite a warning from PUC President R. E. Mittelstaedt that the commission's gas and telephone rate investigations may be affected seriously.

Mittelstaedt warned, too, that the budget reduction will mean the commission will be required to abandon its long-range power survey program.

The budget cut involves the jobs of three presently employed engineers and one stenographer-clerk, and three additional engineers the commission desires.

The reduction, recommended by Legislative Auditor Rolland A. Vandegrift, was approved by a subcommittee and the

full ways and means committee upheld the subcommittee's action.

Mittelstaedt told the committee the commission is working under severe conditions imposed by the greatest combined work load in its history.

Connecticut

Raise in Bus Fares Granted

THE state public utilities commission last month granted the Connecticut Company and the Connecticut Railway & Lighting Company permission to raise fares to 10 cents. The commission authorized both companies to drop the three tokens for 25 cents fare and collect a straight 10-cent cash fare starting April 1st.

Both companies could raise all other cash and ticket fares, except schoolchildren's tickets, 20 per cent on April 1st. They were given the remainder of this year in which to redeem their outstanding tokens.

Delaware

Commission Bill Introduced

A NEW bill to create a 3-member state public service commission was introduced in the house on March 21st. The bill, introduced by Representative Francis E. Holliday, Republican of Delaware City, would authorize the governor to appoint three persons, one from each county, to serve as commissioners at annual salaries of $4,500 each. The terms would be six years, except that the first appointees would be named for two, four, and six years.

The commission would be empowered to appoint a secretary. The attorney general would be its adviser and it would have office space in the state house. It would supervise and regulate all public utilities, including those providing gas, electricity, steam, water, transportation, etc.

This would include ferry boats, taxicabs, trackless trolleys, and gasoline busses. The commission would have the power to investigate and to fix just and reasonable rates after a hearing. Appeals from its rulings would be made to the superior court.

When it assumed power, on September 1, 1949, the work of the Wilmington Board of Public Utility Commissioners would be transferred to it.

An appropriation of $50,000 would be made for the next fiscal year to enable the commission to operate.

District of Columbia

Denied Right to Sell Debentures

THE District of Columbia Public Utilities Commission last month denied Potomac Electric Power Company permission to sell $37,000,000 3¼ debentures to three insurance companies. The commission said the record made "in this case does not convince this commission that it would be in the public interest to permit the substitution of 3¼ per cent debentures for 2 per cent and 2¼ per cent bank loan notes at this time; or to permit redemption of 3.60 per cent preferred stock at a premium of $731,250."

Potomac Electric had planned to use the funds raised from the private sale of the debentures to prepay $17,000,000 of outstanding bank loan notes, redeem 225,000 shares of preferred stock, and to finance construction.

Louisiana

Power over Butane Denied

THE state public service commission is without power to regulate the state's $16,000,000 butane gas industry unless specifically authorized by the state legislature, it was contended in a brief forwarded recently by the attorney general's office to the East Baton Rouge parish district court.

Answering a suit by the three public service commission members, which seeks to have the law creating the liquefied petroleum gas commission declared unconstitutional, and the butane industry placed under their body for regulation, the brief further asserted that the plaintiffs have no direct interest such as would give them the right to challenge the constitutionality of the present butane regulatory body.

The brief, signed by Attorney General Bolivar E. Kemp and his first assistant, Carroll Buck, was in support of a bill of exceptions which the attorney general's office filed against the public service commission members' suit sometime ago.

Massachusetts

Gas Study Favored

ESTABLISHMENT of a recess commission to study the advisability of piping natural gas into Massachusetts was favored recently by representatives of two public utilities at a hearing before the committee on power and light.

Thomas M. Joyce, general counsel for the Massachusetts Electric and Gas Association, told the committee his organization "feels that here is something tangible. As private enterprise, we are in favor of it," he asserted.

Also in favor of the proposal, which was unopposed, was Vincent Farnsworth, Jr., who represented the Boston Consolidated Gas Company.

Public utility representatives said a reduction in rates would be possible with natural gas.

However, a proposal filed by Senator George W. Stanton, Democrat of Fitchburg, for a recess commission study of the desirability of Massachusetts entering into an interstate compact with the United States and other New England states for the development of hydroelectric power was vigorously opposed by Mr. Joyce. (See, also, page 516.)

Challenging the need for the study by a recess commission, he pointed out that as recently as 1947 such a commission made a study of the question. It reported that there was little if any chance of developing hydroelectric power in Massachusetts in an economic manner.

Declaring that utilities could be called proponents of the development of hydroelectric power wherever it is feasible, he said that in order to develop a substantial quantity of hydroelectricity it would be necessary to flood "acres and acres" of land.

New Mexico

Fair Employment Act Signed

A FAIR employment practices act, designed to curb racial and religious discrimination in employment, was signed last month into state law by Governor Thomas J. Mabry who expressed doubt, however, as to its value.

"It is to be noted that the bill carries no appropriation," he pointed out.

"Therefore, no satisfactory machinery for enforcement, but it can be considered at least a gesture in the direction of racial and religious tolerance and coöperation.

"I have never favored too much getting this kind of coöperation and tolerance through mandate of law. I rather think that education, precept, and example achieve more in that way. . . . This measure was passed by both houses of the legislature and after ample opportunity for discussion and consideration."

New York

Gas Rate Increase Approved

THE state public service commission recently announced approval of new interim rates for the Long Island Lighting system, providing an annual reduction of $1,200,000 for electricity and an increase of approximately $770,000 for gas.

The rates were allowed to become effective on April 1st and continue to December 31st. The companies affected are the Long Island Lighting Company, the Queensborough Gas & Electric Company, and the Nassau & Suffolk Lighting Company, serving part of Queens and most of Nassau and Suffolk counties.

Commissioner George A. Arkwright dissented, arguing that the companies "are making a greater return on electricity than is warranted, and yet on their own initiative are making no voluntary efforts to have this commission reduce these rates."

The commission, in an earlier decision, refused to rescind the order by which on January 10th it raised the Consolidated Edison Company's gas rates $11,000,000 a year.

Oregon

FEPC Bill Approved

A FAIR employment practices bill, designed to curb racial and religious discrimination in employment, was approved last month by both branches of the state legislature and was expected to be signed by Governor Douglas McKay.

The bill provides for maximum penalties of $500 fine or a year's imprisonment for employers, labor unions, or employment agencies discriminating against a person because of race or religion.

Exempted from terms of the bill are employers of fewer than five persons, social, fraternal, charitable, educational, and religious organizations.

Rhode Island

Utility Bill Introduced

LEGISLATION to enable municipalities in the state to acquire, construct, or lease electric power plants again was introduced in the state house of representatives recently by Representative Alphonse G. LeBlanc, Democrat of Woonsocket. It went to the corporations committee.

Municipalities would have to have the approval of their voters, in referendum, to operate the public utilities. The bill also provides that "when need for such a plant is clearly shown by reason of

high or discriminatory rates for electric service," it would be the duty of a city or town administration to initiate action for acquisition of the electricity plant."

A three-fifths vote of a municipal council or a petition signed by two-fifths of a community's electors would serve as a call for an election.

Intermediate Review Eliminated

A BILL has been signed into state law by Governor John O. Pastore under which appeals from decisions of the state public utility administrator will be taken directly to the state supreme court, eliminating intermediate review by the 3-member public utility hearing board.

An appeal from the administrator's order in a rate case, under the new law, will not automatically result in a stay of rates handed down by him. However, the supreme court at its discretion could stay effectiveness of the order until it had completed its hearings on appeal.

Hearing on the appeal before the supreme court will not be *de novo* as has been the case before the hearing board. A transcript of testimony before the administrator will be admissible as testimony before the court.

Washington

Three-way Fight Begun

A 3-WAY struggle for Puget Sound Power & Light Company plants valued at upwards of $10,000,000 reached the courts recently when two public utility districts filed surprise condemnation actions at Tacoma in the Pierce County Superior Court.

In the suits, the Thurston County PUD seeks to condemn the company's 23,000-kilowatt Electron plant and Kitsap County PUD moves to take over the 62,000-kilowatt White river plant.

PUD attorneys were reported to have worked all night preparing the complaints, to forestall condemnation plans announced on March 21st by city of Tacoma officials. The filing took Seattle city officials equally by surprise. The Seattle city council had recently undertaken negotiations with the company for the White river plant, but did not attempt condemnation procedure.

The city of Seattle can buy the White river and Snoquolmie Falls plants of the Puget Sound Power & Light Company if it is willing to pay "very substantial" severance damages, Frank McLaughlin, president, told the city council last month.

McLaughlin's letter was in response to one from Councilman David Levine, council president, asking the company for a definite "yes" or "no" answer.

The city of Tacoma also was a prospective purchaser of the White river plant and also seeks the company's smaller Electron plant on the Puyallup river.

While McLaughlin's letter did not refer to the Tacoma purchase plan, which developed only recently, claims for severance damages, to compensate the company for losses suffered in operating other parts of its system, undoubtedly will be asserted under any plan involving a part of the company's generating system, officials believed.

McLaughlin frequently has stated that the company's generating system should be operated as a whole, regardless of its ownership. His letter to Levine emphasized this view.

McLaughlin's stand was said to indicate that the public utility districts, which for several years have been undertaking to buy the Puget properties, continue to have the inside track. The PUD's plan to purchase the system as a whole, thus avoiding the issue of severance damages.

The PUD's have had their troubles in perfecting their purchase proposal. The state supreme court invalidated a plan presented two years ago. The recent state legislature undertook to meet this legal difficulty. But the PUD's still are

unable to present a united front, the Whatcom County District objecting to the valuation placed upon properties in that county.

If the PUD's buy the system as a whole, they expect to sell the distribution properties in the Seattle competitive area to the city of Seattle, but they hope to keep all generating properties.

Governor Signs Power Measure

GOVERNOR Arthur B. Langlie signed the controversial 3-way power bill into law last month. The measure provides:

1. For creation of a state power commission vested with authority to put the state in the power business on the wholesale level. It can acquire and operate production and transmission facilities.

2. That two or more public utility districts may go together to negotiate for the purchase of private power company facilities which extend beyond the borders of a single PUD. Condemnation would not be permitted in this instance.

3. That PUD's make payments to school districts in lieu of taxes in areas where they take over private power companies.

Wisconsin

Commission Appointment Confirmed

THE state senate last month confirmed Governor Rennebohm's appointment of his pardon counsel, Timothy Brown, Madison, to the state public service commission. Rennebohm drew criticism from a Democratic spokesman for his announcement that Brown was only a temporary choice for the post formerly held by Lynn Ashley, commission chairman.

Before the vote of confirmation, 23 to 5, Bubolz, Republican of Appleton, praised Brown as "a man of highest integrity, honesty, and ability." Nelson, Democrat of Madison, said he was reluctant to oppose Brown because he recognized his ability, but aimed criticism at the governor.

"I do not believe this sort of stop-gap government should be continued," Nelson said. "The situation in the commission has been 'a scandal to the jaybirds,' and the governor has had four years to find it out. Brown told the committee hearing on his appointment that he knew no more about commission affairs than the average man, yet the governor would have us believe Brown can make a thorough study of the commission."

Nelson and Tehan, Democrats, of Milwaukee, were joined by three Republicans in voting against confirmation.

Meanwhile the state assembly decided to reconsider a bill which proposed changes in the state public service commission after hearing the outline of a new plan to place a single director in charge of the department. Schilling, Republican of Onalaska, offered the new plan and led a floor fight that won reconsideration over the opposition of Republican floor leaders.

Gas Rate Increase Predicted

AN average gas bill increase of about 31 cents was predicted recently by the Milwaukee Gas Light Company for its 190,500 residential customers in Milwaukee, Waukesha, Ozaukee, and Washington counties. The company last month was granted a rate increase of about 8 per cent by the state public service commission.

P. J. Imse, secretary and treasurer of the company, said that the average monthly gas bill for residential customers (who use the gas for cooking but not for heating purposes) varied under the old rate from $2.93 in Milwaukee to $4.39 in outlying areas of company service.

The bills now will range from about $3.24 to $4.70, he said.

Progress of Regulation

Commission Limits Payments under License Contract with Parent Company

THE California commission has decided that it not only has power to disallow unreasonable payments to a related company as an operating expense, but it also has power to prohibit an operating company from paying excessive amounts under a contract with a parent company. The commission decided:

1. That it is contrary to the public interest, the interests of the Pacific Telephone & Telegraph Company, and its minority stockholders, and constitutes a continuing prejudicial threat to the interest of ratepayers, for the company, directly or indirectly, or under any color or guise, or by any device whatsoever, to continue to make percentage of gross revenues payments to the American Telephone and Telegraph Company, pursuant to the provisions of a license contract.

2. That it is in the public interest to order and direct the operating company to discontinue such payments.

3. That it is in the public interest for the commission to direct the utility company to comply with rules regulating such payments.

The commission laid down the rule that the telephone company must pay for services rendered by its parent no more than the reasonable cost of such services or their reasonable value, whichever is the lesser.

The company must file reports showing all payments of this sort, together with an itemization of services rendered. At the outset the reasonable amount is fixed at $2,250,000 on an annual basis in place of percentage allowances. This is subject to adjustments as facts and circumstances may warrant.

Authority to regulate such payments is based on the broad regulatory power granted to the commission over the fixing of rates, issuance of securities, general regulation and supervision, and power to regulate accounting.

The commission said that it was prescribing a statute, so to speak, "in the commission's legislative capacity," not unlike a statute or rule prescribing an accounting requirement or regulation in aid of regulatory jurisdiction. Reference was made to the fact that accounting requirements have been upheld although they have required the elimination from property accounts of hundreds of millions of dollars worth of claimed assets. No confiscation, said the commission, results from such regulation.

Since the parent company owns more than 87 per cent of the capital stock of the operating company, the commission also declared, any excessive payment under the license contract diminishes to that extent income that might be devoted to dividends, to the detriment of minority stockholders. It was said to be the duty of the commission to protect minority stockholders.

A contention that this regulation invaded the domain of management was rejected. All regulation to some degree, said the commission, invades the domain of management.

The commission saw no conflict with Federal power, since application of the proposed regulatory rule would involve as to rate regulation and accounting practices only intrastate operations. As to regulation of security issues of the subsidiary, the commission said that its authority was not questioned because the Federal power had not occupied this field.

All contracts, no matter how lawful or valid, and property rights, no matter how long vested, the California Public Utilities commission continued, are subject to impairment and even destruction by the lawful exertion of the police power of the state. *Re Pacific Teleph. & Teleg. Co. (Decision No. 42529, Application No. 28211).*

Commission Exercises Power to Grant Interim Telephone Rate Increase

OBJECTIONS to commission authority to grant an interim rate increase were overruled by the California commission with the statement that it is an elementary rule of law that the power to grant a particular relief carries with it all the incidental, necessary, and reasonable authority to grant that which is less. The commission permitted the Pacific Telephone & Telegraph Company to raise various rates in view of important changes in operating expenses since the issuance of its decision in *Re* Pacific Teleph. & Teleg. Co. (1948) 75 PUR NS 379. There the commission approved a 5.6 per cent rate of return.

The state supreme court in Saunby *v.* California R. Commission (1923) 191 Cal 226, PUR1924B 22, ruled that the commission might issue an interim or emergency rate reduction order based upon a summary showing. The commission said that if it might thus summarily reduce rates, it logically follows that it may, in an emergency, grant interim rate relief to a public utility.

Western Electric Company, said the commission, is not at all comparable to an independent manufacturing concern in its relation to an operating telephone company because they are under common ownership. The parent company, it was ruled, may not through the corporate device of the manufacturing company realize a profit from transactions between its subsidiaries. Such a profit may not be capitalized by the operating company or charged by it to operating expense, thus subjecting ratepayers to the burden of paying a profit upon a profit. Neither price comparisons nor comparisons of profits of manufacturing corporations, in the opinion of the commission, may be used in judging the reasonableness of the Western Electric Company's prices.

A payment to the parent, American Telephone and Telegraph Company, for services under a license agreement was reduced to an amount found by the commission to be reasonable; and the commission went further and attached to its rate increase order a condition that the company limit payments to its parent as provided in the commission's separate Decision No. 42529. *Re Pacific Teleph. & Teleg. Co. (Decision No. 42530, Application No. 29854).*

Composite Depreciation Rate Fixed for Gas Company

A COMPOSITE rate of 2.1 per cent annually was approved by the public utilities commission of the District of Columbia for the Washington Gas Light Company. This rate was arrived at after an extensive study of the company's history and past depreciation practices.

The commission pointed out that it

has consistently used the straight-line method in all of its recent cases where the question of depreciation was a factor. It has also utilized a depreciated original cost rate base. This treatment, the commission believes, affords equity to both investors and customers of the company.

The reserve requirement indicated by a depreciation study had been arrived at by aggregating a multitude of calculations based upon estimated service lives ranging from a very few years to more than 100 years, and recorded ages of various items of property involved in the study, many of which were of necessity on an average basis.

Reference to a precise figure, said the commission, implies a degree of certainty which in fact does not exist. Although estimated lives were premised in part on past experience, inadequate records in the company's early history detracted somewhat from the reliability of this source of information as a guide to future experience. In the final analysis, said the commission, the estimation of service lives of depreciable property is at best a guess and subject to all the frailties of man's inability to foretell future events.

The depreciation problem, the commission said further, is not one that can be disposed of permanently. If later it appears that an adjustment of book reserve is necessary, such adjustment should be treated as an operating revenue deduction over such reasonable period of time as may be determined by the circumstances then existing. *Re Washington Gas Light Co. (Order No. 3487, PUC No. 3197/1).*

Commission Has Jurisdiction over Suburban Service of Municipal Water Utility

THE claim by a municipal water utility that the commission had no jurisdiction to order it to serve residences beyond the city boundaries was dismissed by the Pennsylvania commission.

The utility for some time had voluntarily rendered service to areas beyond the corporate limits of the city. With rising costs the city considered and discarded a proposition to double its rates for water service outside the city and then enacted an ordinance prohibiting any service outside the city except to property abutting on an existing city main. When several lot owners in areas already being served applied for, and were refused, service, they complained to the commission.

In finding that it had jurisdiction to hear the complaint, the commission ruled that the action by a municipal utility of extending service to areas outside city limits brings it within the jurisdiction of the commission with respect to extensions and service as well as rates. Having elected to serve customers in this territory, the commission concluded, the utility may not thereafter unduly discriminate by serving some and refusing to serve others in the same class and similarly situated. *Elder et al. v. Altoona (Complaint Docket No. 14272).*

Tapping Fees for Water Service in Temporary Town at Dam Site Approved

THE Montana commission allowed the operator of a water company to make effective a tapping charge applicable to persons who were not parties to contracts providing for the payment of $2 per front foot of mains by each property owner. The tapping fee was $50 per connection.

The contracts had been entered into before the company became a utility, but the commission upheld them as being reasonable and necessary under the unusual

circumstances existing. A person refusing to pay the tapping fee was not a party to such a contract.

The community to be served came into existence only by reason of the construction of a dam by the Bureau of Reclamation of the United States government. Construction would not require more than about six years. There was no water supply available near the town site and various property owners and residents entered into negotiations with an individual to install a water system.

The utility operator admitted that he had refused service until the objecting party had paid the fee, on the ground that to serve him without the payment would be discriminating against those who had made payments under contracts. He further contended that this payment was necessary if the system was to be operated and maintained for the benefit of the people.

During the hearing, however, he agreed to a tapping charge of $50 per connection where a person was not a party to any contract, and requested approval of such a charge. The filed schedule did not provide for any special rates for tapping, connection, or application for service.

The general rules applicable to water utilities preclude the charging of tapping fees, whether fixed by contract or tariff regulations, unless conditions warrant an exception to the general rule. The commission believed that conditions did warrant an exception in this case. It pointed out that no other reason than the construction of the dam accounted for the existence of the community, and upon completion of the dam there could be no expectation for the town to exist.

The contracts were entered into prior to the time when the company came under the jurisdiction of the commission as a utility. Notwithstanding this fact, however, the commission held that it had authority to make any necessary changes or modifications of the contracts when the parties did come under its jurisdiction. It said if it interfered with the contracts, however, the company would be placed in a position to lose its entire investment and the people of the area would stand to lose the availability of a water system. The commission said:

> Nearly all of the land in the town sites is covered by contract and Williams states he will not require or demand further tapping fees from persons locating on these lands. The land owned by this plaintiff is not covered by any such contract. Other parties may occupy land not covered by contract. As to these parties Williams feels that a tapping charge of $50 per connection would be reasonable and just and he requested approval of such a rate. Payment of such a fee will help defray the cost of installing the system in order that the system may be retired within the life expectancy of the town. This fee would be reasonable in view of the contracts entered into by other parties. Notwithstanding our general rule that there should be no tapping charge, we believe a tapping charge of $50 is justified under the unusual conditions existing in this case.

Stewart v. Williams (Docket No. 3648, Order No. 2036).

Cost to Affiliate without Profit Controls Rate Base for Power Project

THE Federal Power Commission, in ordering a reduction in rates of the Pennsylvania Water & Power Company, rejected numerous claims of property cost because of its disapproval of evidence offered as to property acquired from affiliates. It was said to be incumbent upon the company to show with respect to property acquired from an affiliate that the amount it claimed as cost was cost to the affiliate, not profit.

Those who organized the enterprise sold bonds and issued stock. Members of a syndicate had received stock which,

the company contended, represented proper compensation for services. The commission, however, ruled that this contention was not supported and that the value of stock issued when based on capitalization of revenues should not be recognized.

As further support for the claimed cash value of stock, the company relied upon testimony as to the market value of properties required for a dam. That valuation was based upon engineering factors designed to reflect power site value and had no relation to cost. It was, said the commission, the type of valuation consistently held to be of no probative value in determining project cost.

The commission decided that neither the common stock nor preferred stock had any cash value at the start and, in dealing with subsequent property acquisitions, it relied upon that finding as one of the reasons for saying that cost had not been established. Payment for property with this stock, found to be valueless, would not, in the opinion of the commission, represent a cost element.

Power to regulate the company's rates was asserted by the commission in the face of an argument that the commission was without authority under Part II of the Federal Power Act because its conditional authority under Part I was exclusive of its authority under Part II. In substance, the argument was that a Part I licensee cannot be a public utility under Part II and that a licensee's interstate wholesale rate may be regulated by the commission, if at all, only under Part I. The essentials of this argument, said the commission, were considered and rejected in *Re* Safe Harbor Water Power Corp. (1946) 5 FPC 221, 235-237, 66 PUR NS 212.

The commission further determined that the company's facilities came within the definition of § 201 of the Federal Power Act. It was said to be evident that the operations of a unified system enterprise were completely interstate in character, notwithstanding the fact that system energy transactions at some particular time might involve energy never crossing the state boundary.

After considering operating revenues and expenses the commission decided that a rate of return of 5¼ per cent was fair and reasonable. *Re Pennsylvania Water & Power Co. (Opinion No. 173, Docket No. IT-5915).*

Bottled Gas Business Not a Public Utility

THE Indiana commission held that an individual owning and operating a bottled gas distribution service is not a public utility subject to its jurisdiction. The business involves the installation of tanks at individual residences. The tanks are periodically filled with liquefied propane. This propane is vaporized by releasing from under pressure, becoming a gas and passing to burner tips through the facilities and transmission mains of the owners of the premises.

Propane, for the purpose of facility in transportation, storage, and handling, is held in a liquefied state until ready for use. It is sold as a liquid and is converted into gas after sale and delivery. When sold and delivered it is a packaged commodity.

The commission observed that if it determined, under the provisions of the Utility Act, that it had jurisdiction over the sale of this type of commodity merely because the ultimate use was for the generation of heat or light, it would necessarily mean that it would also have to assume jurisdiction over the sale of oil, coal, wood, kerosene, gasoline, and all other products used or usable for the generation of heat or light.

It held that the general assembly, in enacting the Utility Act, did not contemplate and could not have contemplated any such broad interpretation. The commission stated that there is a distinct difference between the operation of a public utility engaged in the sale and distribution of electricity, gas, or water, or the rendition of telephone service, and that of one engaged in the distribution

and sale of bottled gas. In holding that it had no jurisdiction over this type of business, it said:

> Necessarily, the service rendered by a public utility is so dedicated to the public that it becomes affected with the public interest. There is an offer to sell to and serve the public generally, the right of use of public property and condemnation of private property. Such is not the case in the sale of bottled gas which is a merchandising business. Each sale is an independent sale and transaction between the seller and the individual customer. The seller does not hold himself out nor is he expected to sell to the public generally but on the contrary sells his commodity to selected customers under written contracts under various brand trade names.
>
> Another differentiating factor is that in the sale of bottled gas the seller is in fact selling a product which is a commodity and is packaged, while in the case of a public utility, the utility is selling primarily a service and supplying a commodity which is not tangible in the sense that it can be packaged and parceled.

Re Oatman (No. 20728).

No Trial of Rate Case by Mail

REQUESTS for findings of a manufacturing company complaining of a proposed electric rate increase but failing to appear by counsel at the rate hearing were not considered by the Maine commission.

Much correspondence was received by the commission from the "Portland counsel" and "Boston counsel" of the company but no counsel appeared at the hearing. The requests for finding were submitted by mail.

The commission pointed out that it was under no legal obligation to pay any attention to the so-called "requests." The commission added that it has no idea who "Boston counsel" may be and that, if attorneys are going to represent clients, they must come forward and make themselves known.

A representative of the company, not an attorney, came to the hearing and attacked the rates as unreasonable and unfair and discriminatory against the company. Of this attack the commission said:

> The commission was presented with no evidence from Goodall-Sanford, Inc., as to any type of alleged discrimination; there was nothing to show wherein Goodall Sanford, Inc., was paying more or less for its energy than any of its competitors; nothing was produced to give the commission any concrete information as to why and in what way the claimed discrimination was brought about. A shotgun blast was fired that everything was wrong but not a detail was advanced—there were no pellets in the shell.

Goodall-Sanford, Inc. v. Central Maine Power Co. (FC No. 1287).

Segregation on Intrastate Busses Upheld

THE North Carolina Supreme Court affirmed the conviction of two white and two colored men of violating the state's segregation laws on an intrastate motor carrier. The settled policy of the state calls for segregation of white and colored races on transportation systems. The law requires that separate but equal accommodations be provided.

A company regulation requires white passengers to occupy front seats of busses and colored passengers to occupy rear seats and that white and colored passengers were prohibited from sharing

a seat unless all other seats were occupied.

The record indicated that the passengers knew of the rule and perhaps violated it to test its validity. The court pointed out that the state statutes involved do not purport to deal with the enforcement of segregation but to make it mandatory that equal accommodations be provided for both colored and white.

The state, the court ruled, in proving that men of different races occupied the same seat in violation of the statute and refused to move to unoccupied seats on being requested to do so, had carried its burden of proof. *State v. Johnson et al. 51 SE2d 186.*

Other Important Rulings

THE South Dakota commission authorized Class A motor carriers to make a maximum increase of 15 per cent over present rates, but noted that the profit in serving smaller communities along so-called peddle runs was not as great as between terminals, and the commission believed that the operators should have authority to exercise managerial discretion to increase rates somewhat in order to properly serve the shippers and at the same time make a profit. *Re Wilson Storage & Transfer Co. et al. (F-2226).*

The Indiana commission authorized the city of Logansport to add a coal clause, based on the present-day price of coal of $7.18 a ton, applicable to commercial, industrial, and heating rate schedules. *Re Logansport (No. 20786).*

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TITLES

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UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

Edward J. McBride

v.

Western Union Telegraph Company

171 F2d 1
December 1, 1948; rehearing denied January 5, 1949

APPEAL *from District Court judgment denying injunction to require telegraph company to restore service; affirmed. For lower court decision, see (1948) 78 F Supp 446.*

Parties, § 3 — Complainant — Individual instead of attorney general — Federal rule.

1. A person complaining against the refusal of a telegraph company to restore service may maintain an action in a Federal district court in his own name, without entitling his action in the name of the United States or the attorney general, with the complainant being named as relator, p. 66.

Service, § 134 — Grounds for refusing restoration — Race track news by telegraph — Use for gambling purposes.

2. A telegraph company is justified in refusing to restore interstate wire service to transmit race track news between cities in eastern states and California cities and the use of telegraph instruments, called drops, in the latter cities which telegraphically receive such news, where the telegraph company has been notified by California state officials that the service is being used illegally in connection with bookmaking of race track bets, which is illegal under California law, p. 66.

APPEARANCES: Charles H. Carr, of Los Angeles, Cal., for appellant; Lawler, Felix & Hall, of Los Angeles, Cal., for appellee; Everett C. McKeage, of San Francisco, Cal. (Roderick B. Cassidy, Hal F. Wiggins, Boris H. Lakusta, and J. Thomason Phelps, all of San Francisco, Cal., of counsel), for People of State of California and Public Utilities Commission of State of California, amici curiae.

Before Denman, CJ., and Healy and Orr, CJJ.

DENMAN, CJ.: McBride appeals from a judgment of the district court in a case in which McBride seeks to "compel the restoration to him" by the telegraph company of the telegraph wire service to transmit race track news between cities in eastern states and California cities and the use of Morse telegraph instruments, called drops, in the latter cities, which telegraphically receive such news. The complaint alleges these services had been theretofore supplied McBride but had been discontinued by the telegraph company, and that he cannot transmit

such news "over interstate Morse wire facilities unless defendant is compelled or required by order of this court to continue to supply plaintiff with such facilities."

The court (a) held that it had no jurisdiction of the person of McBride; and

(b) Though so determining the court's absence of jurisdiction, found on the evidence that the telegraph company was justified in not renewing the service and held that McBride is "not entitled to mandatory or any order that said leased facilities and services be restored" and ordered that a temporary restraining order be vacated and and that McBride's "request for a preliminary injunction be and the same is hereby denied."

[1] We are of the opinion that the court erred in holding that it had no jurisdiction over the person of McBride, but should be sustained on the evidence adduced in its holding that McBride is not entitled to a mandatory or any order that the telegraphic facilities and services restored, and in its order that preliminary injunction be denied.

A. *Jurisdiction in personam.*

McBride claims he is entitled to maintain his action under 47 USC § 406, 47 USCA § 406, providing:

"The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a carrier subject to this chapter, of any of the provisions of this chapter which prevent the relator from receiving service in interstate or foreign communication by wire or radio, or in interstate or foreign transmission of energy by radio, from said carrier at the same charges, or upon terms or conditions as favorable as those given by said carrier for like communication or transmission under similar conditions to any other person, to issue a writ or writs of mandamus against said carrier commanding such carrier to furnish facilities for such communication or transmission to the party applying for the writ."

The district court held that the action, in effect for a writ of mandamus, should have been brought by someone other than McBride, apparently the attorney general, for him as "relator."

Federal Rules of Civil Procedure, Rule 81(b), 28 USCA has abolished writs of mandamus and substituted a motion or complaint. We think that, assuming that when § 406 was passed the "relator" should have entitled his action as U. S. ex rel., etc., or the Attorney General ex rel., etc., Rule 81(b) now has substituted the simpler process and made unnecessary the mere formality of pleading in the relator form.

[2] B. *The telegraph company is justified in refusing to restore the discontinued service of race track news.*

The telegraph company based its refusal to restore the service on Federal Communication's Tariff Regulation 219(8) *infra.*

McBride's brief disavows any contention that this regulation is unreasonable and at the hearing stated that for the purposes of this litigation it is, as claimed by the telegraph company, to be deemed valid. As his brief states it, "the issue is not the reasonableness of Tariff Regulation No. 219 but whether appellant can compel *restoration* of service improperly denied

him."[1] (Italics supplied.) So far as this case concerns this regulation, we are not presented with the question of constitutional right considered in such a case as New State Ice Co. v. Liebmann, 285 US 262, 278, 76 L ed 747, PUR1932B 433, 438, 52 S Ct 371, 374, where, the court determined the lack of constitutionality of "a regulation which has the effect of denying or *unreasonably* curtailing the common right to engage in a lawful private business, . . ." (Italics supplied.)

Regulation 219, in paragraph (8), provides:

"Facilities furnished under this tariff shall not be used for any purpose or in any manner directly or indirectly in violation of any Federal law or the laws of any of the states through which the circuits pass or the equipment is located, and the telegraph company reserves the right to discontinue the service to any drop or connection or to all drops and connections when it receives notice from Federal or state law enforcing agencies that *the service is being* supplied contrary to law." (Italics supplied.)

The important factor in the regulation is that it is the *"service"* being supplied by the telegraph company over its wires through any drop which it may discontinue on receiving notice that it is violating the law. It is not necessary that there be a guilty participating of the sender or intermediate transmitter of the messages to the drop. The guilty use of the drop in receiving the messages is enough to show an illegal use of the wires' service.

Bookmaking of race track bets is illegal under § 337a and § 182 of the California Penal Code. McBride's racing news from the race tracks of other states was sold to a California corporation, Consolidated Publishing Co. of Los Angeles. Through the latter's direction, the out of state race track news was received through the drops in various places in California. McBride claims that the transmission of such news is a legitimate business under a California decision, People v. Brophy (1942) 49 Cal App2d 15, 120 P2d 946.

For the purposes of this appeal we assume that, so far as concerns McBride, he was engaged in a legitimate business in sending the race track news *from* the eastern tracks and that Consolidated Publishing Company in its participating in its transmission committed no wrongful act. Such facts are not relevant to the contention here that the restoration of the service was properly denied by the telegraph company because it was advised by California law enforcement officers that the recipients of the news were bookmakers using the receiving drops in making racing bets, thus causing the telegraph company to supply service violating the California law.

The telegraph company was notified by the attorney general for California in writing that such illegitimate use of the drops was being made in several cities in California and by the sheriff

[1] Hence there is no merit to the contention of the telegraph company that McBride's relief is confined to a resort to the Communication Commission under those cases holding that where the claim is that the "regulation in question is unlawful because unreasonable . . . the objection must be addressed to the Commission and not as original matter brought to the court." Ambassador, Inc. v. United States (1945) 325 US 317, 324, 89 L ed 1637, 58 PUR NS 193, 65 S Ct 1151; Baltimore & O. R. Co. v. United States ex rel. Pitcairn Coal Co. (1910) 215 US 481, 492, 494, 54 L ed 292, 30 S Ct 164.

of Kern county, California, that such use was being made in the city of Bakersfield, California. McBride does not complain that the places of such illegal misuse are not sufficiently described, but that the statement of the notices of illegal use are not substantiated. We do not agree that the notifying officers are required to supply to the telegraph company the probative facts to be adduced in court in the trial of the cases of violation stated in the notices.

McBride's complaint contained two causes of action. We can see no essential difference between them. In both he states that the telegraph company should be "required by order of the court to *continue* to supply plaintiff with such facilities." (Italics supplied.) He contends, however, that his second cause of action requires the telegraph company to disregard the notices of the law enforcement officers because they concern a past wrongdoing and treat it as beginning de novo a litigation for the supplying of the telegraphic and drop services which the company refuses him.

The effect of such a construction would make nugatory the provisions of § 219(8). A new illegal use would follow to be stopped only long enough for the bringing of another such suit as here. The process of law violation would continue indefinitely with only minor stoppages by an impotent attorney general. The telegraph company may rely on the attorney general's and the county sheriff's notices as sufficient to justify the telegraph company's refusal to restore the services, which, as both complaints describe it, would be a continuing of past services.

The order denying the preliminary injunction is affirmed.

OHIO COURT OF APPEALS, SUMMIT COUNTY

Joseph C. Ruhlin

v.

East Ohio Gas Company et al.

— Ohio App —, 83 NE2d 659
December 17, 1948; motion to certify overruled January 12, 1949

APPEAL *from judgment dismissing action to compel gas company to supply space-heating service; affirmed.*

Service, § 487 — Parties — Enforcement of Commission orders.

The Public Utilities Commission of Ohio alone is clothed with power to bring suit in the court of common pleas against a public utility company to enforce the orders of the Commission regulating the furnishing of natural gas by such a company to the consuming public.

Headnote by the COURT.

APPEARANCES: Brouse, McDowell, May, Bierce & Wortman, of Akron, for appellant; Buckingham, Doolittle & Burroughs, of Akron, for appellee.

PER CURIAM: This cause was instituted in the court of common pleas of Summit county, seeking to enjoin the East Ohio Gas Co. from refusing to serve the petitioner with gas for space-heating purposes to replace other fuel.

The trial court dismissed the petition of the plaintiff, on the ground that it had no jurisdiction of the subject of the action. The appeal to this court is on questions of law from this final order, and the sole question presented is the one of jurisdiction.

There appears in the pleadings, the contract between the city of Akron and the East Ohio Gas Co., as well as various emergency orders of the Public Utilities Commission of Ohio, pertinent to the supplying of gas by the East Ohio Gas Co. in this area.

In our determination of the question of the jurisdiction of the court of common pleas, we must look necessarily to the question of power, and "its solution must be found in the statutes themselves, since . . . the jurisdiction and power in question are entirely of statutory origin and delegation." State ex rel. Ohio Bell Teleph. Co. v. Common Pleas Court (1934) 128 Ohio St 553, 7 PUR NS 329, 331, 192 NE 787.

The supreme court has recently examined the statutes giving power to the Public Utilities Commission and to certain orders of the Commission, and in connection therewith, pronounced:

"6. A temporary and statewide order of the Public Utilities Commission, which is adopted and promulgated after a hearing and upon a finding that such order is essential to protect the health and safety of the people of the state because of a serious shortage of natural gas for consumption and use by Ohio consumers which shortage is due in part to greatly increased demands of consumers for gas to be used in space heating of homes and which order in part requires that 'no distributing utility shall supply or be required to supply natural gas service to any consumer, present or prospective, in the state of Ohio for equipment designed to furnish the source of space heating that replaces other fuels, or for additional space heating,' is a valid exercise of the police power of the state and binding on all parties to contracts for the sale and purchase of natural gas, whether municipalities, corporations or individuals."

In the same case, we also find the following pronouncement:

"3. All contracts are subject to the paramount rights of the public, and all contracts the subject matter of which involves the public welfare will have read into them with the same force and effect, as if expressed in clear and definite terms, all valid public regulations then existing or thereafter enacted, essential for the promotion of the health, safety and welfare of the people. The authority of the state to exercise its general police power must be recognized as an implied condition of any such contract." Akron v. Public Utilities Commission (1948) 149 Ohio St 347, 74 PUR NS 81, 78 NE2d 890, 892.

The appellant does not challenge the legality of the Commission's orders

now in controversy, but claims, inter alia, "that the common pleas court has jurisdiction . . . upon the issues made by the pleadings and the jurisdiction to try the matters to determine if there has been a violation of the Akron franchise, as altered or amended by the effective emergency orders of the Public Utilities Commission."

It appears from the pleadings that the emergency orders of the Commission govern entirely the rights of the parties in respect to the complaints made in the petition, and, this being so, the Commission alone is empowered, under the statutes, to bring action against the utility company to compel the enforcement of its orders, in the event of a claimed violation thereof. Section 614–67, General Code.

It is our conclusion that the court of common pleas has no jurisdiction of the subject of this action, and that the judgment of that court in so finding must be affirmed.

Judgment affirmed.

Doyle, PJ., Skeel (of the eighth district, sitting by designation in place of Stevens, J.) and Hunsicker, JJ., concur.

GEORGIA COURT OF APPEALS, DIVISION NO. 1

Columbia Baking Company

v.

Atlanta Gas Light Company

No. 32153
— Ga App —, 50 SE2d 382
November 11, 1948; rehearing denied December 10, 1948

REVIEW *of judgment for gas company in suit by industrial customer to recover alleged excess in gas rates charged; affirmed.*

Discrimination, § 50 — Rate differences — Contract — Industrial gas consumer.

1. Where an industrial consumer of gas enters into a contract with the gas company in which it is stipulated that "the customer agrees to pay for all gas delivered . . . at the company's industrial rate now or hereafter on file with the Georgia Public Service Commission and now known as rate No. Four (4) of the company's rate schedule on file with said Commission, provided that no rate charge hereunder shall exceed the rate prescribed or approved therefor by the Commission," the gas company is not liable for a breach of the contract because it contracts with other industrial users for lower rates and files such contracts with the Georgia Public Service Commission, when there was no other rate specifically and expressly prescribed by the Commission for the complaining consumer and it has paid no higher rate than that specifically prescribed for it, p. 73.

Discrimination, § 52 — Rate differences — Contracts filed with Commission.

2. A gas company under the jurisdiction of the Georgia Public Service Commission is not liable to an industrial consumer for the difference between the rates charged to it and those charged to other industrial users of gas when the latter rates are provided for in contracts filed with the Commission which it permits to go into effect, p. 74.

Discrimination, § 3 — Measure of damages — Rate differences.

3. The measure of damages for unjust discrimination by a public utility is not the difference in rates but the damages resulting to the consumer by reason of its being charged a higher rate, which damages were neither alleged nor proved in this case, p. 75.

Headnotes by the COURT.

Columbia Baking Company sued the Atlanta Gas Light Company to recover the alleged excess in gas rates charged to petitioner, the amount so claimed to be due being the difference between the rates charged to and paid by plaintiff and the rates charged to and paid by other industrial consumers of gas in like circumstances with plaintiff. The petition alleged in substance the following: In October, 1930, the Georgia Public Service Commission prescribed rates for industrial consumers of gas what is known as Industrial Rate No. 4, which was available to any industrial consumer. On January 30, 1931, defendant entered into a contract with plaintiff by which defendant undertook to furnish plaintiff gas for industrial use. This contract provided: "In consideration of such service, the customer agrees to pay for all gas delivered by the company at the company's industrial rate now or hereafter on file with the Georgia Public Service Commission and now known as rate No. Four (4) of the company's rate schedule on file with said Commission, provided that no rate charge hereunder shall exceed the rate prescribed or approved therefor by the Commission. . . . The customer further agrees to accept and be bound by all rules and regulations in connection with the service hereby covered, which are now or may hereafter be filed with, issued or promulgated by the Georgia Public Service Commission and/or other governmental bodies having jurisdiction thereof." Since January 1, 1936, plaintiff paid the rates prescribed by said rate No. 4. Beginning in 1935 defendant entered into certain special arrangements with various industrial users, including laundries, dry cleaning establishments, dye works, linen services, rubber companies, and others, by which it sold gas to them for industrial use at rates less than those prescribed by rate No. 4. If there was any difference in situations between plaintiff and the various industrial users mentioned which might cause a difference in rate treatment, the situation of plaintiff was more favorable rate-wise than that of such other industrial users in that plaintiff's operations were for the most part conducted at night, at which time the peak load upon defendant's facilities is less than in the daytime. Since before 1936 the following rules of the Georgia Public Service Commission were in effect. Rule 2. *"All unjust*

discrimination forbidden. The several companies, in the conduct of their intrastate business, shall afford to all persons equal facilities in the conduct of such business, without unjust discrimination in favor of, or against, any; and wherever special facilities are afforded to one patron, whether upon a special rate authorized by this Commission or otherwise, such company shall be bound to afford to any other patron, or patrons, under substantially similar circumstances, like facilities upon like rates. *All rates bona fide. No rebates.* The rate charged for any service, by any company, shall be bona fide and public; and the giving of any rebates, bonus or 'draw-back' is hereby expressly forbidden." Rule 3 in part. *"Rates of Commission are maximum rates.* All of the rates prescribed by the Commission are maximum rates, which shall not be exceeded by any company. *Rates may be reduced below-maximum provided no discrimination is made.* Any company may charge less than the prescribed maximum rate, provided that, if a less rate be charged one person, such company shall, for a like service, charge the same lessened rate to all persons." Rule 5. *"Special rates must be approved by the Commission.* All special rates, made by any company for any service to be rendered shall first be submitted to and approved by the Commission before being put into effect." Independent of the rules of the Georgia Public Service Commission, defendant was a public utility holding itself out as willing to serve all persons or corporations desiring to purchase gas for industrial use, and as such was under a common law duty to offer to all persons desiring to purchase gas from it the same rates for substantially the same service, and it was bound to abstain from discrimination against any customer by charging it higher rates than it charged other customers under substantially the same circumstances. The existence of the special arrangements above mentioned came to the knowledge of the Commission as a result of which the Commission passed an order discontinuing the special rates in a proceeding to which plaintiff was not a party. Plaintiff did not at any time prior to April, 1945, have any knowledge that defendant was selling gas for industrial use to other purchasers, who were situated substantially the same as plaintiff, at rates less than the rates charged for gas used by plaintiff, and plaintiff from January 1, 1936, to April, 1945, believed it was buying gas on the same basis as other similar consumers. During said time plaintiff could not by reasonable diligence have discovered that defendant was selling gas for industrial use at lower rates to other customers similarly situated. Defendant was under a duty, as a public utility, both at common law and under the rules of the Georgia Public Service Commission, to sell gas to plaintiff for industrial use at as low rates as it sold it to other users similarly situated. During said time defendant did not disclose to, and in fact concealed from, plaintiff, the fact that it was selling gas at lower rates to other similar industrial users. It was defendant's duty in morals and law to notify plaintiff of such lower rates. The reason defendant did not so inform plaintiff was because its purpose was to obtain large sums of money from plaintiff by charging it higher

rates. Plaintiff placed its confidence in defendant and relied upon it for such information. In failing to make the disclosure defendant wilfully breached its moral and legal duty owed to plaintiff and such failure was a fraud by defendant which deterred plaintiff from sooner bringing this action. Plaintiff amended the petition and set forth its claims in three counts: (1) For breach of an express contract, (2) liability by reason of a rule of the Commission, (3) for breach of the common law duty to charge plaintiff the same rates as those charged to those similarly situated. The defendant answered and denied the material allegations of the petition as amended. By agreement the case was submitted to the court for trial and "final disposition" without the intervention of a jury upon agreed facts and oral evidence introduced on the trial, with the right of each party to appeal from the judgment of the court. The court rendered a judgment in favor of the defendant and the plaintiff excepted. While evidence was introduced, the court's findings and judgment show that the judgment was on the pleadings and not on the pleadings and evidence. No demurrers are brought up in the record, but the statements of the trial judge in his judgment show that the case was presented to him under both pleadings and evidence. The court stated in his judgment: "The defendant's contentions are (1) that the plaintiff is not entitled to recover under any count of the petition, (2) that the plaintiff and the laundry and rubber processors were not competitors, and, even if there was unjust discrimination, there is no right to recover under either count of the petition, (3) that the evidence does not establish unjust discrimination, (4) even if the evidence did establish unjust discrimination, payments made by the plaintiff were voluntary and cannot be recovered, and (5) if there was a right to recover, the plaintiff is barred by statute of limitations to recover any sum paid by it more than four years prior to April, 1945." There is no exception to the judgment of the court on the ground that under the agreement to authorize the court to try the case without a jury the court was not authorized to pass on the sufficiency of the petition or that the petition, in the absence of adjudication on demurrer to the contrary, set forth a cause of action and that therefore the court was bound to determine only whether the allegations were proved. The only exception to the judgment is that the court erred in his legal rulings on the sufficiency of the various counts to set forth a cause of action in contract. This court will therefore determine whether the judgment of the trial court was correct, whether under the law as applied to the pleadings alone or to the pleadings and evidence combined.

APPEARANCES: Madison Richardson, of Atlanta, for plaintiff in error; Moise, Post & Gardner, of Atlanta, for defendant in error.

FELTON, J.:

[1] 1. The trial judge did not err in finding for the defendant on count one. The contract provided that "no rate charged hereunder shall exceed the rate prescribed or approved therefor by the Commission." As stated by the trial judge the plaintiff does not contend that it paid more than the rate

specifically established or approved for the plaintiff or its class of consumers. This ruling is also correct for the reason stated in the following division of this opinion.

[2] 2. Count two seeks recovery on the ground that rule three of the Commission had the effect of fixing the lower rate for all industrial gas users by reason of the lower charge to laundries and rubber processors. Rule three of the Georgia Public Service Commission is as follows: " . . . Any company may charge less than the prescribed maximum rate, provided that, if a less rate be charged one person, such company shall, for a like service, charge the same lessened rate to all persons." The contention of the plaintiff here is that when the utility charged to one customer in the industrial class a lower rate than that charged to others similarly situated such action by the utility had the effect of fixing the rate for all industrial customers at the lower rate level. The lower court ruled that rule three did not have such effect, but was merely an order or command of the Commission which could subject the utility to a penalty for a violation of the rule or to mandamus. The evidence in this case supports this finding at least in so far as the Commission's interpretation of its own rule supports it. The Commission investigated the special laundry and rubber processing rates and eliminated them from the rate schedules rather than order them into effect for all industrial users. But even if the lower rate could have the effect contended for by the plaintiff, a lower rate made with the consent and approval of the Commission would not have such effect for the reason that when such a lower rate is filed with the Commission and the Commission takes no action repudiating the rate, such action by the Commission has the effect of making a new class of industrial customers, and whether right or wrong, just or unjust, the lower rate is legal and authoritative, and the above rule becomes inapplicable since another and distinct class of customers is created by the implied approval of the Commission of the lower rate, the only justification for which would be that the customer to whom it is given is in a different industrial class of users of gas from the industrial users using the rate No. 4. So, if the rule ever could have the meaning contended for by plaintiff it would only be where the lower rate is given by the utility without the knowledge or consent of the Commission. In this case the laundry rates were filed with the Commission which it received subject to objection and complaint. The rubber processing contracts were filed with the Commission and for a number of years were left in operation without molestation. The Commission is charged with the duty of fixing rates and preventing unjust discrimination between the various classes of those served by public utility companies. Where utility patrons are classified by the Commission and rates fixed accordingly, either upon notice and hearing, or by the express or tacit approval of a classification and rate voluntarily filed by a utility company, the result is either actually or in effect a judgment and finding of the Commission. If the Commission erroneously makes a classification or inadvisedly acquiesces in one voluntarily made there is no liability on the part

of a utility company to one who contends that he or it was erroneously omitted from the classification and given a higher rate. His remedy is before the Commission to correct whatever mistake has been made. In this case the classifications and rates were made with due notice to the Commission and without its disapproval. Therefore, there is no liability on the part of the utility company to a customer for the difference between the rate charged it and that charged another in the same general but not specific class defined by the Commission in its tacit acquiescence in the classification and rate. The rule refers to lower rates given without authority, and even then creates no liability, in and of itself, against the utility company in favor of one discriminated against. No error in finding for the defendant on second count.

[3] 3. Assuming for the sake of argument that a utility company could be liable for breach of duty not to unjustly discriminate in a case where a lesser charge to one of a class was authorized or acquiesced in by the rate-making body, the great weight of authority is to the effect that the measure of damage is not the difference in rates, but the actual damage suffered in competitive business. See Parsons v. Chicago, & N. W. R. Co. (1897) 167 US 447, 42 L ed 231, 17 S Ct 887; Pennsylvania R. Co. v. International Coal Mining Co. (1913) 230 US 184, 57 L ed 1446, 33 S Ct 893, Ann Cas 1915A 315; Interstate Commerce Commission v. United States (1933) 289 US 385, 77 L ed 1273, 53 S Ct 607, and cases cited. Also see Boerth v. Detroit City Gas Co. (1908) 152 Mich 654, 116 NW 628, 18 LRA NS 1197; Homestead Co. v. Des Moines Electric Co. (1918) 160 CCA 449, 248 Fed 439, 12 ALR 390; Cock v. Marshall Gas Co. (Tex Civ App 1920) 226 SW 464; Callender v. Northern States Power Co. (1934) 192 Minn 591, 257 NW 512; Charles H. Lilly Co. v. Northern P. R. Co. (1911) 64 Wash 589, 117 Pac 401; Kousal v. Texas Power & Light Co. (1944) 142 Tex 451, 53 PUR NS 308, 179 SW2d 283; New York Teleph. Co. v. Siegel-Cooper Co. (1911) 202 NY 502, 96 NE 109, 36 LRA NS 560; and United Gas Corp. v. Shepherd Laundries Co. (1945) 144 Tex 164, 61 PUR NS 82, 189 SW2d 485. Most if not all of the cases cited by plaintiff in error to sustain the contention that there is a common law liability for difference in rates to one of a class charged a higher rate than others similarly situated are distinguishable in that they are mandamus or other types of cases, in that they have been modified or overruled, or in that they were based on a specific statute. There is no Georgia Statute giving a right of action for difference in rates. Code, § 93–415, only gives a right of action for loss, damage or injury. Section 8 of the Interstate Commerce Act, 49 USCA § 8, interpreted by the Supreme Court, allows recovery for damages sustained and not for difference in rates. The action here is not for damages by reason of unjust discrimination suffered in competitive business but only for the difference in rates. The court did not err in finding for the defendant on the third count.

The court did not err in finding for the defendant on the pleading and evidence.

Judgment affirmed.

Sutton, CJ., and Parker, J., concur.

Note. — The disqualification of Judge Sutton on account of ownership of stock in both of these companies was waived by both plaintiff and defendant in error.

UNITED STATES COURT OF APPEALS, DISTRICT COURT OF COLUMBIA CIRCUIT

Border Pipe Line Company

v.

Federal Power Commission

No. 9571
— US App DC —, 171 F2d 149
November 22, 1948

PETITION *for review of order of Federal Power Commission holding that company is a natural gas company within the meaning of the Natural Gas Act; order set aside.*

Interstate commerce, § 7 — Exclusion of foreign commerce.

1. The term "interstate commerce" does not include foreign commerce unless Congress by definition for the purposes of a particular statute includes them both in the single expression, such as "interstate and foreign commerce," p. 77.

Interstate commerce, § 37.1 — Scope of Natural Gas Act — Foreign commerce.

2. Separation of the two subjects, interstate commerce and foreign commerce, in the Natural Gas Act must be observed, p. 77.

Interstate commerce, § 37.1 — Scope of Natural Gas Act — Foreign commerce.

3. The Natural Gas Act, defining a natural gas company as a person engaged in the transportation of gas in interstate commerce or the sale in interstate commerce of such gas for resale, and defining interstate commerce as commerce between any point in a state and any point outside thereof or between points within the same state but through any place outside thereof, but only in so far as such commerce takes place within the United States, does not include within the meaning of the term "natural gas company" a company owning and operating a gas pipe line located wholly within one state and selling its gas at its terminus near the state line to an industrial consumer which transports the gas into Mexico and uses it there, p. 77.

Statutes, § 12 — Construction — Legislative history — Congressional intent.

4. A court, in interpreting an act of Congress, cannot write into the act a

provision which Congress affirmatively omitted by leaving out of the act a phrase originally included in the bill before Congress, p. 77.

Courts, § 4 — Jurisdiction — Legislative matters.

5. Courts should give to the terms of a statute their plain meaning so long as the resultant effect is sensible and not in conflict with a discernible purpose, and they should not invade the functions of the legislative branch of government when an administrative agency thinks that the real intent and purpose of a statute is broader than or different from its terms, since such agency need only ask Congress for an enlargement or clarification, p. 80.

APPEARANCES: John C. Dawson, of Houston, of the Bar of the state of Texas, pro hac vice, by special leave of court, with whom J. Ross Gamble, of Washington, D. C., was on the brief, for petitioner; Bradford Ross, General Counsel, Federal Power Commission, of Washington, D. C., with whom Louis W. McKernan and W. Russell Gorman, both of Washington, D. C., Principal Attorneys, Federal Power Commission, were on the brief, for respondent; James E. F. Gammon, of Washington, D. C., entered an appearance for C. Huffman Lewis, amicus curiae.

Before Prettyman and Proctor, Ct. JJ., and Bailey, DJ., sitting by designation.

PRETTYMAN, CJ.:

[1–4] This is a petition for review of an order of the Federal Power Commission. Petitioner owns and operates a gas pipe line located wholly within the state of Texas. It sells its gas at its terminus near the Rio Grande river to an industrial consumer which transports the gas into Mexico and uses it there. Petitioner operates under permits for the export of gas issued to it in 1942 by the Commission[1] and by the President.[2] The order under review was issued February 14, 1947, and in it the Commission held that petitioner is a "natural-gas company" within the meaning of the Natural Gas Act and thus must have a certificate of public convenience and necessity, which the order authorized to issue. The consequence which gives rise to the controversy is that the order would place petitioner within all the Federal regulatory provisions applicable under the statute to "natural-gas companies."

The statute defines a natural gas company as follows:[3]

"(6) 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

"(7) 'Interstate commerce' means commerce between any point in a state and any point outside thereof, or between points within the same state but through any place outside thereof, but only in so far as such commerce takes place within the United States."

The act contains numerous regulatory provisions relating to "natural-gas companies." It also has a section[4] relating to the export of gas from the

[1] Under § 3 of the Natural Gas Act of June 21, 1938, 52 Stat 822, 15 USCA § 717b.

[2] Under Executive Order No. 8202, 4 Fed. Reg. 3243 (1939).

[3] Section 2(6) and (7), 52 Stat 821, 15 USCA § 717a(6) and (7).

[4] Section 3, 52 Stat 822, 15 USCA § 717b.

United States, which section is applicable to any "person" and not merely to natural gas companies. As we have indicated, petitioner has complied with this section.

Interstate commerce and foreign commerce have been distinct ideas ever since they appeared as two concepts in the Constitution. The clause there provides that Congress shall have power "To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes." [5] "Interstate commerce" does not include foreign commerce, unless Congress by definition for the purposes of a particular statute includes them both in the single expression. Congress has frequently done that. It has also many times applied its enactments to "interstate and foreign commerce" and is perfectly familiar with that expression and that idea.[6] In the present statute it first declared the necessity for Federal regulation of transportation and sale "in interstate and foreign commerce." It then provided one section applicable to exports "from the United States to a foreign country," and in other sections provided regulatory measures applicable to "interstate commerce," defining that term without mention of foreign commerce. In view of the prevailing practice of Congress in other acts, the separation of the two subjects in this act must be noticed and, we think, observed.

The plan of regulation revealed by the statute thus read seems reasonable. It seems reasonable, or at least not unreasonable, that Congress should be concerned only with the fact of exportation or importation in the case of foreign commerce, but with rates, practices, accounting, facilities, and financing in the case of domestic commerce. Of course, if a company be in both interstate and foreign commerce, one might burden the other and so produce the result which the burden of intrastate on interstate commerce causes. But we do not have that situation here. The operation before us is wholly local, and it is only because of petitioner's sales for foreign commerce that the Commission seeks to control all its activities.

[5] Clause 3 of § 8 of Art. I.

[6] Some examples of expressions used by Congress are:

Act of Feb. 22, 1935, relating to transportation of petroleum products, 49 Stat 30, 15 USCA § 715a(3)—"from any place in the United States to a foreign country."

Federal Firearms Act, 52 Stat 1250 (1938), 15 USCA § 901(2)—"interstate or foreign commerce."

Bituminous Coal Act, 50 Stat 90 (1937) 26 USCA § 3526(d)—"commerce among the several states and territories, with foreign nations, and with the District of Columbia."

Securities Act of 1933, 48 Stat 74, 15 USCA § 77b(7)—"between any foreign country and any state, territory, or the District of Columbia."

Securities Exchange Act of 1934, 48 Stat 882, 15 USCA § 78c(a) (17)—"between any foreign country and any state."

Motor Carrier Act, 49 Stat 551 (1935), 49 USCA § 306—"interstate or foreign operation."

Communications Act of 1934, 48 Stat 1065, 47 USCA § 153(h)—"interstate or foreign communication."

Interstate Commerce Act, 41 Stat 474 (1920) 49 USCA § 1(1) (c)—"from one state or territory of the United States . . . to any other state or territory of the United States . . . or from or to any place in the United States to or from a foreign country."

Food and Drugs Act, 42 Stat 1487 (1923) 21 USCA § 62—"interstate or foreign commerce."

Food and Drugs Act, 34 Stat 768 (1906) 21 USCA § 2—"from any foreign country, or shipment to any foreign country."

Meat Inspection Act, 34 Stat 1260 (1907) 21 USCA § 71—"interstate or foreign commerce."

Federal Caustic Poison Act, 44 Stat 1406 (1927) 15 USCA § 402(c)—"interstate or foreign commerce."

Moreover, foreign commerce was specifically included in the bill which was the original legislative foundation for the final enactment of this act, but was omitted in that enactment. In the bill introduced on February 6, 1935, by Representative Rayburn,[7] addressed to the entire subject of Federal public utility regulation, one title related to natural gas companies. The phrase "or from or to any place in the United States to or from a foreign country" was in the section which defined the applicability of that part of the proposed act. That title of Mr. Rayburn's bill was not then enacted. Instead, the proposal for regulation of gas companies became H. R. 11662 in the next session, but without the phrase just quoted, and so the bill remained throughout successive sessions until enactment.

We are also impressed with the fact that although this petitioner was before the Commission and secured its permit to export in 1942, it was not until 1947 that the Commission asserted its regulatory authority in other respects over that same business. We are not advised that the Commission has asserted that power in any other instance until its order in this case. The eight years and more which passed between the approval of the act in 1938 and the first assertion by the Commission of general regulatory power over companies engaged in foreign commerce but not otherwise subject to such general powers, seems to indicate a long-standing administrative view contrary to the Commission's present position. Indeed it appears that when the Commission was considering the applications of this petitioner in 1942, counsel for the Commission advised it in writing that a certificate of public convenience and necessity under § 7(c) was not required, saying in part:

"It is significant to note that the exportation of natural gas from the United States to a foreign country, or the importation of natural gas from a foreign country is not 'interstate commerce' as that term is contemplated by the act. The legislative intent as to the limitation placed on the definition is clearly expressed in the concluding portion thereof, namely, 'only in so far as such commerce takes place within the United States.' Applicant's proposed operations do not include either transportation of natural gas in interstate commerce, or sales of natural gas in interstate commerce, which would bring such operations within the term, 'interstate commerce,' as such term is defined by said § 2(7) of the act."

The Commission vigorously urges various arguments based upon internal evidence in the act, which evidence they glean from reading various provisions. Petitioner follows the same process and obtains opposite results. Thus, the Commission says that the clause "but only in so far as such commerce takes place within the United States" indicates that except for that limitation the act would apply to commerce outside the United States. Petitioner says, on the contrary, that the clause is a specific exclusion from the act of all foreign commerce and was intended to insure that such commerce which occurs even in the course of interstate commerce was not included. Again the Commission perceives in-

[7] Title III of H.R. 5423, 74th Cong. 1st Sess.

consistencies in the scheme of regulation if it be not applied to foreign commerce. The petitioner, on the contrary, points to incongruities in the act if its provisions be applied to such commerce. It points to the rate-making provisions, the requirements for filing schedules of charges, the prohibitions against discrimination, the power to require extensions of facilities, the ascertainment of costs or fair value of property, the prescription of methods of accounting, as matters peculiarly applicable to the regulation of domestic commerce, in which the consumers sought to be protected are citizens, but which are singularly inapt when applied to foreign commerce. They also point to the difference in the reference to the public interest which appears in § 3, relating to foreign commerce, and that which appears in § 7(c), which relates to certificates of public convenience and necessity. In the former instance, the permit must issue unless the proposed exportation "will not be consistent with the public interest," whereas, in the latter instance, a certificate can issue only if the proposed sale, etc., "is or will be required" by the public interest.

But these conflicting impressions and views are inconclusive in our minds. We find a clear answer in the considerations which we have described in the forepart of this opinion. The circumstances which we there outlined define a limit to judicial power in "interpreting" a statute. We are asked by the Commission to interpret "interstate commerce" so as to include foreign commerce, or to read the statutory definition as though it contained the phrase originally included but later eliminated by Congress in the legislative course of the act. This we cannot do. We cannot write into an act of Congress a provision which Congress affirmatively omitted.

[5] We add a further word upon the subject, because the situation with which we are here confronted is of general importance. Questions such as the one presented in this case are properly for the Congress. The circumstances upon which they arise are familiar. Congress uses expressions of established meaning. It takes action of recognized implications; e.g., it strikes from a pending bill a clause of clear import. But the administrative body finds a sufficient penumbra of meaning to justify a claim to more authority than appears upon the face of its grant. It asserts the extended authority and thus forces the issue upon the courts. It asks the courts to divine an intent on the part of Congress and then to decree that the words of the statute spell that intent. Of course, if there be a plain intent, or purpose, or objective, the statute must be deemed to be in pursuit of it, and the courts will enforce that view. But where relatively plain language and congressional conduct of accepted implication point one way and the contrary appears only through strained and complex assumptions and deductions, questions which the administrators may have as to the full intent and desirable scope of the congressional action ought to be addressed to the Congress. The prime responsibility for making statutory meaning clear is on the Congress. It is bad from the viewpoint of sound government for the courts to twist strange results out of otherwise understood expressions of

the legislature. If, perchance, the judiciary does not reach the objective at which the legislature aimed, there is a most undesirable confusion of functions of the two branches. Such practice by the judiciary is also bad from the viewpoint of the law generally. Words of established meaning are given an unnatural significance, and thereafter whenever they appear the law is uncertain. The interpretation of statutes is not like the interpretation of a will, where the person whose intent is to be ascertained no longer lives and some meaning must be given his expressions however meaningless; or of a contract as to which the sole parties differ in their assertions of intent or meaning. In those situations an interpretation is the only available procedure and, once had, is irretrievable. Not so in the case of a statute; the Congress is in frequent session, its doors open and its committees available. Its procedure is no more complicated than that of the courts. If an administrative agency thinks that the real intent and purpose of a statute is broader than or different from its terms, it need only ask Congress for an enlargement or clarification. We are no longer in an age when such inquiry is impractical. The wise and sound course for the courts is to give to the terms of a statute their plain meaning, so long as the resultant effect is sensible and not in conflict with a discernible purpose.

Our views upon the meaning of the statute make unnecessary the consideration of other points presented. The petition to set aside the order of the Commission must be and is granted.

Order of the Commission set aside.

MISSOURI PUBLIC SERVICE COMMISSION

Re The Inter-County Telephone Company

Case No. 11,412
October 22, 1948

APPLICATION *for approval of proposed telephone rate increase; approval denied and new rates prescribed.*

Valuation, § 317 — Working capital — Telephone company.

1. A telephone company's computation of cash working capital at approximately 1/16 of annual operating expenses (pro forma) was deemed reasonable, p. 83.

Valuation, § 28 — Rate base determination — Recorded book value.

2. The recorded book value of a telephone company's property and plant was not deemed to provide a reliable measure for determining the reasonableness and adequacy of proposed rates where no pretense was made that the recorded plant investment represented the original cost of the property and the actual starting plant values were predicated on the issuance of common stock, p. 83.

Valuation, § 36 — Rate base determination — Investment cost.

3. The investment cost of a telephone company's plant at a specific date was deemed to be a reliable basis in considering a proposed increase in rates, p. 84.

Return, § 111 — Telephone company.

4. A return of 6.91 per cent was considered excessive for a telephone company, p. 85.

Rates, § 553 — Telephone — Differentials — Types of instruments.

5. Changes in differentials between desk set, wall phone, and handset telephone service were disapproved in connection with a rate increase where the largest per cent of increase would go to wall phone subscribers, those receiving the lowest class of service, and the next largest increase would go to the desk set subscribers, with the handset subscribers receiving the most favorable consideration, it being the opinion of the Commission that existing differentials should be maintained, as otherwise one of the greatest incentives for the company to continue improvement of its service would be lost, p. 86.

(WILSON, Commissioner, concurs in result only.)

By the COMMISSION: On July 23, 1948, The Inter-County Telephone Company, hereinafter sometimes referred to as the company, filed its application in this case, requesting authority of the Commission to file revised schedules of rates for telephone service rendered by it through the various exchanges in Missouri which it owns and operates. Such revised schedules of rates are attached to an exhibit filed with the application and indicate that on the basis of the number of subscribers on January 1, 1948, the proposed rates would produce gross exchange revenues greater by the amount of $20,996.40 annually than the rates presently being charged.

After due notice to all interested parties, the cause was set for hearing at Jefferson City, Missouri, on September 28, 1948, at which time and place the hearing was held before a member of the Commission. The appearance on behalf of the company was by counsel. Members of the Commission's legal, engineering, and accounting staffs were also in attendance. No one appeared in opposition to the authority requested in the application. At the conclusion of the evidence the case was duly submitted on the record.

All of the following recitals, findings, and conclusions are based on oral testimony or documentary evidence received at the hearing.

The company is a telephone corporation organized and operating under the laws of Missouri, with headquarters at Gallatin, Daviess county, Missouri. It is engaged in rendering telephone service through 15 exchanges in Daviess and DeKalb counties, Missouri, and one exchange at McFall, Gentry county, Missouri. There is a total of 2,833 stations in the system, including both company-owned stations and switcher stations. The exchanges in Daviess and DeKalb counties are all interconnected and free service is available to the subscribers in these exchanges so that they may talk to a subscriber in any other of the company's exchanges in

these two counties without paying a toll charge. The exchange at McFall in Gentry county is an isolated exchange that was acquired by the company about two years ago. As material and labor has not been available to improve the service at this exchange, no increase in rates at this point is requested in these proceedings.

The president of the company, Mr. J. M. Roberts, testified that at the present time the company is operating under rates established in 1931 and that the present proceedings were instituted because of the company's inability to continue operations under these schedules in the face of rapidly increasing costs of both labor and material used in rendering telephone service. The company's territory is in the neighborhood of other telephone systems where higher wages have prevailed, and it has been necessary recently to increase wages in order to retain present employees and to obtain additional employees that were needed.

Mr. J. E. Flanders of Jefferson City, Missouri, a public utility consultant, introduced in evidence an exhibit which he identified as Applicant's Exhibit No. 1 which contained the results of a survey he had made of the property and books of the company and included proposed new rate schedules which, in his opinion, were warranted on the basis of the property investment and the present operating costs the company is now experiencing.

[1] In this exhibit the witness developed a rate base as of December 31, 1947, of $238,592, consisting of the following elements:

Original Cost of Plant per books ...	$227,551
Materials and Supplies	6,541
Cash Working Capital	4,500
Rate Base	$238,592

The allowance for materials and supplies was the actual balance in this account at December 31, 1947. Cash working capital was computed at approximately 1/16 of annual operating expenses (pro forma). We feel that the method of computing both of these allowances is reasonable and that the amounts claimed are not excessive.

As a check of the accuracy of the recorded book figures, the witness included in his exhibit a calculation of the original cost of the property based on an investment cost appraisal of the telephone plant in service at April 15, 1931, prepared by the Commission's engineering staff in connection with Case No. 7420, 19 Mo PSCR 154, PUR1932E 284, which appraisal was prepared under the immediate supervision of the witness. This appraisal shows the estimated investment cost of the property used in public service at April 15, 1931, was $213,358, which, when the net additions since that date of $10,439 are added, amounts to a total of $223,797, compared to the recorded balance in the plant accounts at that date of $227,551.

[2] From an examination of the evidence before the Commission, we do not believe the recorded book value of the property and plant provides a reliable measure for determining the reasonableness and adequacy of the proposed rates. No pretense is made that the recorded plant investment represents the original cost of the property. We are aware that the actual starting plant values recorded in 1927

were predicated on the issuance of common stock. We are of the opinion that in these proceedings it is not necessary to determine a definite rate base, and also we do not believe there is adequate evidence before us to make such a finding. It is our opinion, however, from the evidence, we can approach a more accurate and equitable measure than that used by the witness.

[3] We believe that for the purposes at hand the investment cost of the plant at April 15, 1931, would be a reliable basis at this time in considering the increase in rates. As aforesaid, the witness set forth in his exhibit the estimated investment cost of the telephone plant in service at April 15, 1931, from the appraisal plus the net additions to December 31, 1947, at $223,797. On examination of the witness, however, it was disclosed that the appraisal included $6,881 for materials and supplies and $12,556 for general overheads. The inclusion of materials and supplies in the plant account results in a duplication and should be eliminated. Also, it was shown that the general overheads, which averaged around 6 per cent, were added arbitrarily by the Commission's engineers to their estimated costs. As a majority of the property existing at that date had been constructed piecemeal by various small predecessor companies, we doubt if these costs were ever actually incurred and feel justified in eliminating them at this time. The elimination of these two items reduces the estimated original cost of the telephone plant in service at December 31, 1947, from $223,797 to $204,360. Adding thereto the recommended allowance for materials and supplies and cash working capital of $11,041 results in a rate base at December 31, 1947, of $215,401, which we shall use for the purposes of these proceedings.

Included in the company's exhibit was a comparative income statement for the year 1947 separated under three headings identified as Actual 1947, Adjusted 1947, and Pro Forma. This statement is condensed as follows:

	Actual 1947	Adjusted 1947	Pro Forma
Total Operating Revenues	$73,781	$77,253	$77,253
Total Operating Expenses (Less Depreciation Expense and Income Taxes)	56,798	63,097	75,335
Total Available for Depreciation, Return, and Income Taxes	$16,983	$14,156	$1,918

In explanation the witness testified that the first column is the Actual 1947 operations as recorded in the books of the company; the second column is the Actual 1947 operations adjusted for conditions under which the company was operating at January 1, 1948, and the third column is the Adjusted 1947 revenues and expenses, further revised to reflect a full year's operations under the increased operating costs that had gone into effect during the year 1948 to date made up principally of increased wages and added personnel.

The witness testified in detail as to the mechanics he had used in developing the Adjusted 1947 figures, and the Pro Forma Adjustments and his exhibit contains detailed figures showing the adjustments he had made. The

adjustments increasing revenues were computed on a station count at January 1, 1948, for a full year and also by adding to toll revenues the revenues estimated to have been lost due to the telephone strike which occurred in 1947, plus additional minor changes. The increase in operating expenses reflects the high level of wages now being paid and the increase in the number of employees at their present wage rates projected to a full year's operation, plus various other minor changes in operating cost which were taken into consideration.

The exhibit also shows that in 1947 the company accrued depreciation at the rate of 3.5 per cent of the monthly average balances in the depreciable property accounts and which amounted to $6,995. When this expense is deducted from the $1,918 available for depreciation, income taxes, and return on the pro forma basis, the company under present operations has an operating deficit of $5,077.

The exhibit includes a schedule showing the present rates being charged and the rates that the company requests authority to file. Based on the number of telephones in service at January 1, 1948, the proposed rates will increase gross revenues by $20,996 annually. The witness attempted to justify this amount by a somewhat round-about process starting with what he considered a fair return and working back through the tax liability and depreciation expense to find the difference between this amount and the amount actually available on his pro forma computations.

We see no reason for setting out in detail the various adjustments to operating revenues and expenses made by the witness. The Commission's staff has examined the exhibit and is in agreement as to the basis and the mathematical accuracy of all the adjustments to the recorded operating revenues and expenses made by the witness to arrive at the pro forma amount available for depreciation, income taxes, and return of $1,918. The evidence shows that the increased personnel and the wage adjustments in the pro forma income statements are in effect at this time, so we think the company is entirely justified in including these increased operating expenses in computing its proposed rates. The witness did admit on examination that he had failed to consider in his computations dues and donations of $171 which were included in operating expenses, which dues and donations are of the type the Commission has always excluded in rate proceedings.

[4] From an examination of the evidence before us we have concluded that, on the basis of 1947 operations adjusted to reflect the increased costs to date, the company has a net deficit for return of $2,593. We also believe that substituting the revenues estimated to be derived under proposed rate schedules, the net available for return would then be $14,874. The following table sets forth the basis of our computation:

In preceding paragraphs of this report, we have stated that for purposes of this proceeding we shall use a rate base of $215,401 to measure the reasonableness of the rates the company requests authority to file. Using this rate base, the net available for return of $14,874 would produce a rate of return of 6.91 per cent, which we definitely consider as excessive, indicating

	Pro Forma	Pro Forma After Proposed Rate Increase
Total Operating Revenues	$77,253	$98,249
Operating Expenses (Before Depreciation and Taxes)	$71,462	$71,462
Taxes (Other than Income)	3,873	3,873
Depreciation	6,995	6,995
Income Taxes	—	3,529
Total Operating Expenses	$82,330	$85,859
Net Operating Revenues	$(5,077)	$12,390
Add: Dues and Donations included in Operating Expenses	$171	$171
3% of Balance in Depreciation Reserve of $77,095 (38-A)	2,313	2,313
Total Additions	$2,484	$2,484
Net Available for Return	$(2,593)	$14,874

to us that the proposed rates are unreasonable.

[5] In examining the proposed rates, it is also noted that the company has changed the existing differentials between the three types of telephone instruments in service. At the present time there is a 25 cents per month additional charge for a desk set over the charge for a wall phone, and a 15 cents per month additional charge for a handset over the charge for a desk set, and a 40 cents per month additional charge for a handset over the charge for a wall phone. In the proposed rates, the differential between the wall and desk set has been eliminated, and a 25 cents per month differential substituted for the handset over the desk set and the wall phone.

The evidence shows that the company is aware that both the wall and handset instruments are obsolete, and all new instruments now being purchased are of the latest handset type. The company is working toward the ultimate elimination of the wall phones, but present deliveries are very slow and the complete elimination of obsolete instruments will be sometime in the future. It is easily seen then, under the proposed rates, the largest percentage of increase would go to the wall phone subscribers, the subscribers who are receiving the lowest class of service. The next largest increase would go to the desk set subscribers, with the handset subscribers receiving the most favorable consideration. In previous cases before us we have stated that it is our considered judgment in all rate adjustments, existing differentials between various types of instruments should be maintained, otherwise one of the greatest incentives for the company to continue improvement of its service is lost.

After reviewing the evidence before us, we have determined and hereby find that the proposed rates filed with the application are inequitable and the company should not be allowed to place them in effect. Likewise, we believe that the proposed rates will produce an increase in gross revenues that would result in an excessive return to the owners of the property. We are aware that the original cost, or estimated original cost, of the property has not been previously determined and that therefore any measure of value that we use now is subject to ad-

justment at some future date. New rate schedules that will produce an increase in gross revenues of $18,500 annually over the rates presently in existence would, on the basis of our estimated rate base, produce a net available for return of approximately $13,000, which in our opinion is reasonable considering the many variables existing in regard to the value of the property and the possibility of some variation in actual operating costs from the amounts allowed in the pro forma statement. We shall, therefore, permit the company to file, subject to the approval of the Commission, increased rates for telephone service designed to increase gross revenues by $18,500 annually, based on the number of stations in service at January 1, 1948, such rates to continue the existing differentials in charges for the three types of telephone instruments now in use by the company.

It is, therefore,

Ordered: 1. That the rates for telephone service as proposed herein be and are hereby denied, and The Inter-County Telephone Company be and is hereby authorized to file in lieu thereof a schedule of rates and charges for telephone service, to become effective November 1, 1948, subject to the approval of the Commission, that will produce annually additional revenues in the sum of $18,500 when applied to the telephones in service at January 1, 1948, and such revised rates shall contain the existing differentials charged for the three different types of telephone instruments now being charged by The Inter-County Telephone Company.

Ordered: 2. That this order shall take effect five days after the date hereof, and the secretary of the Commission shall forthwith serve on all interested parties a certified copy of this order.

Wilson, Commissioner, concurs in result only.

MONTANA BOARD OF RAILROAD COMMISSIONERS EX-OFFICIO PUBLIC SERVICE COMMISSION

Re East Side Telephone Company

Docket No. 3647, Order No. 2027
November 8, 1948

INVESTIGATION *of complaints against discontinuance of telephone service; complaints dismissed.*

Telephones, § 5 — Public utility status — Commission regulation — Rates and service.

1. A telephone service is a public utility, and the duty of fixing the rates and regulation of the service of such utilities is placed under the jurisdiction of the Commission, p. 91.

Consolidation, merger, and sale, § 6 — Jurisdiction of Commission — Sale of utility properties.

2. The Commission does not have authority over transfers and sales of utilities, and, therefore, has no authority over the terms of a contract between the purchaser and seller of the utility, p. 91.

Service, § 215 — Abandonment — Necessity of Commission authorization.

3. The fact that a person operating a telephone company under a contract for sale could not decrease the value of the property by petitioning for abandonment and the fact that the owner of the property could not petition for abandonment until it was released back to him do not excuse the proper parties for abandoning service without first obtaining proper authority from the Commission, p. 91.

Return, § 16 — Right to earn.

4. Utilities are entitled to rates which will pay operating costs and yield a fair return on the value of the property used and useful in the public service, p. 92.

Expenses, § 97 — Salaries of utility owners.

5. A utility owner devoting his time to performing services for the utility is entitled to receive the usual and reasonable wage for such services, and he is not required to donate his time to the patrons of the company, p. 92.

Service, § 231 — Discontinuance of telephone service — Operation at a loss.

6. A telephone company should be permitted to discontinue service where it cannot operate except at an increasing loss, where any rate that would be sufficient would be impractical, where the company does not have a franchise and the abandonment of service leaves the territory open to anyone wishing to undertake the venture, and where the company is not attempting to enjoy any benefit from its status as a utility, p. 92.

Payment, § 6 — Jurisdiction of Commission — Enforcement of payment.

7. The Commission is without authority to enforce an order to compel payment of accounts owed public utility companies, p. 94.

Reparation, § 11 — Jurisdiction of Commission.

8. The Commission is without authority to enforce an order to compel payment of refunds due the patrons of a public utility company, p. 94.

The above entitled matter came on regularly to be heard at Kalispell, Montana, in the court house of said city, at the hour of 10 o'clock A. M., on the 13th day of October, 1948.

APPEARANCES: Merritt Warden, of the firm of Walchlie, Korn and Warden, Attorneys at Law, Kalispell, appearing for Philip Buck; David R. Smith, of the firm of Paul W. Smith, David R. Smith, and J. Miller Smith, Attorneys at Law, Helena, appearing for George O'Connell.

OTHER APPEARANCES: Mrs. M. C. Roberts, ¼ mile from Creston Store, Creston; R. W. Carr, Creston; Gordon Grier, Big Fork; H. A. Lozon, Creston; Mrs. H. H. Young, Creston; Mrs. Laura Plummer, Creston, and H. S. Parker, Big Fork.

For the Board: Edwin S. Booth, Secretary-Counsel.

By the COMMISSION: The East Side Telephone Company, a public utility, has been engaged in furnishing telephone service in the vicinity of

Creston, Montana, for several years. On or about August 28, 1948, the company abandoned service. Several complaints were made to the Commission by patrons of the utility. Investigation by the Commission disclosed that there was question as to who was responsible for the furnishing of service. The parties having interests in the company stated that they were unable to continue service. The Commission set a public hearing at Kalispell, Montana, on October 13, 1948, to determine ownership of the company and whether service should be ordered continued.

At the time of hearing evidence was offered as to the ownership of the company and costs of operation and revenue of the company. Various patrons testified as to the need for continued service. The facts developed by the evidence and records of the Commission are as follows.

The East Side Telephone Company was originally constructed and operated as a stock company. The company charges $2.50 per quarter for service, the customer being required to furnish the telephone instrument. This rate was in effect from September 1926, until May 1945, when the rate was increased to $1.50 per month payable quarterly in advance. The company, in order to render satisfactory service, found it necessary to change its system to a metallic circuit. As a result of its operations and construction the company became indebted to Mr. and Mrs. Philip Buck. In October, 1946, Mr. and Mrs. Philip Buck acquired the company on execution sale for the sum of about $3,900, which represented money due them from the company. Mr. and Mrs. Buck operated the company until January, 1948.

On January 3, 1948, Mr. and Mrs. George W. O'Connell entered into a contract to purchase the company from Mr. and Mrs. Buck for the sum of $8,649.40; Mr. Buck stated that the purchase figure represented the amount due them plus the labor and material, not counting his own services, put into repair and improvement of the system. A down payment of $3,500 was made and Mr. and Mrs. O'Connell assumed operation of the company. Under the contract, title was not to be transferred until full payment had been made. After taking over operation of the company, the O'Connells found that the operation was not successful. Negotiation was entered into and the contract price was reduced by about $3,600. This left the purchase price at about $5,000, which is the value of the property shown on the annual report filed by Philip Buck for the period ending December 31, 1947. The supplemented contract continued until August, 1948.

Mr. O'Connell testified that he sent a notice to the patrons to determine the feasibility of asking for increase in rates. The result of his survey was to determine that the maximum increase the patrons would pay would be 50 cents per month and that even with this increase some patrons would discontinue the service. Because of this fact he did not make application for authority to increase rates. The income from the system was not sufficient to permit continued operation. Mr. O'Connell attempted to sell the company, offering it for as little as $3,500, which would not have been enough to repay the amounts put in

the company by him. He was unable to sell the company. On August 28, 1948, he turned the property back to Mr. and Mrs. Buck and relinquished all interest in the company. He has not operated the company since that time. He stated that he did not have funds, even in the event of an increase in rates, to continue operation of the company.

Mr. Buck did not commence operation of the company after the property was turned back to him. He states that he is unable to operate the company due to finances and the physical condition of Mrs. Buck, who had operated the switchboard when they operated it before.

There are no agreements existing between either Mr. and Mrs. George O'Connell or Mr. and Mrs. Philip Buck with any other company or person which would prevent service being furnished by others. There are no franchises which would prevent furnishing of service by others.

The company has 150 patrons. The company owns about 75 miles of wire line and the maximum length of service is 18 miles. About 40 instruments and 20 conversion hand sets are owned by the company; the balance of the instruments are owned by the patrons. Some of the poles and wire leading into the patrons' buildings are owned by the patrons. The company operates a switchboard and connects with the telephone system of Mountain States Power Company and thus offers nation-wide connections. The switchboard was operated from 6 A. M. to 9 P. M. daily, with 24-hour emergency service.

During the time Mr. and Mrs. Buck operated the company, Mr. Buck performed much of the outside work and the switchboard was handled by Mrs. Buck and her daughter. The report filed with the Commission does not represent the payment of reasonable salary to any of them for their services. The company was operated as a family business and any money left after buying supplies and paying wages to others, represented their return. Mr. Buck is engaged in farming and auctioneering. Mr. and Mrs. O'Connell had no other business. The O'Connells performed much of the service personally. They paid Mrs. Buck $400 for operating the switchboard for three months.

Monthly costs of operating the system testified to by Mr. O'Connell or Mr. Buck, and concurred in by the other, as being reasonable show the following minimum monthly charges. Labor on switchboard, $300; Labor on line and system, $300; rent, $25; heat, $10; service truck operation, $50; repairs, $25; bookkeeping, $40; office supplies, $8. This amounts to $758 per month or $9096 per year. Testimony shows that depreciation should be computed at 10 per cent and on a figure of $5000 valuation; this would amount to $500 annually. Mr. Buck testified that the company could be operated on around $8000 per year. Mr. O'Connell stated the company could probably be operated on a monthly rate of $4 per month. Both Mr. O'Connell and Mr. Buck testified that the company could not be operated on the present revenue without sustaining a loss.

The present income of the company is derived from local and toll calls. The toll calls yield an average of $55 per month or $660 per year. Service

at the rate of $1.50 per phone from the 150 phones amounts to $225 per month or $2700 per year. The total annual income is $3360.

Several witnesses appeared on behalf of the patrons and testified to the need for telephone service. One witness testified that he would be willing to pay $4 per month and another witness testified that the cost of service was not as important as the fact that they needed the service. One witness stated that he believed the costs testified to were too high as the owners would probably perform many of the services themselves.

Several witnesses testified that they had paid their rental for the quarter ending September 30, 1948, and as a result of the termination of service they believed they had a refund coming from the time of discontinuance. The witnesses did not know whether they had any toll charges against them.

[1] A telephone service is a public utility and the duty of fixing the rates and regulation of the service of such utilities is placed under the jurisdiction of the Public Service Commission. (Sections 3879 to 3913 Rev Code Mont 1935). Speaking of the authority of the Commission over abandonment, the Commission in Re Billings Gas Co. (1938) 26 PUR NS 328, 331, 332, said:

"While we do not in this state have a specific statute relating to abandonment, nevertheless, in our opinion the statute referred to necessarily assumes the existence and continued function of the subjects of regulation, namely, public utilities. To hold otherwise would nullify the legislative purpose in the passage of the Public Service Commission Law. In accordance with the foregoing construction of the statute our court has held that the obligation of a utility is a continuing one and that the state through the Public Service Commission may relieve the utility of even a contractual obligation between the city and the utility to operate. Helena v. Helena Light & R. Co. 63 Mont 108, PUR1922E 588, 207 Pac 337. This principle was also recognized by our court in the case of Baker v. Montana Petroleum Co. (1935) 99 Mont 465, 44 P2d 735.

. . . . .

"The devotion of property to public use carries with it the duty to serve the public and the utility has no right to discontinue or abandon its service without the consent of the state. We might further point out that the mere fact that a part of the enterprise or part of the particular service rendered by a utility is not profitable is not in itself sufficient justification for a nonperformance of its duties since the public welfare must be considered. Re Northern Pacific Transport Co. (1938) 31 MUR —, 26 PUR NS 268, ante; Re Montana Western R. Co. (1938) 31 MUR —, 26 PUR NS 325, ante; Re Chicago, M. St. P. & P. R. Co. (1938) 31 MUR —, 26 PUR NS 390; Re Chicago, B. & Q. R. Co. (1938) 31 MUR —."

See also Helena v. Helena Light & R. Co. 63 Mont 108, PUR1922E 588, 207 Pac 337.

[2, 3] This Commission does not have authority over transfers and sales of utilities. It therefore had no authority over the terms of the contract between the Bucks and the O'Connells. It is clear that the East Side Telephone Company should have applied

for authority to abandon service before discontinuing telephone service. However the fact that O'Connell was operating the company but was not the owner would have precluded him from decreasing the value of the property by petitioning for abandonment. Buck, on the other hand, could not petition for abandonment until the property was released back to him. It would thus have been necessary for Buck to assume operation pending decision on an application for abandonment. These factors do not excuse the proper parties for abandoning service without first obtaining proper authority from this Commission. However, to order resumption of service, if the evidence indicates that a petition for abandonment would have been granted, would be an idle and useless act. We will, therefore, consider whether the evidence would justify an order authorizing abandonment of service.

[4, 5] Utilities are entitled to rates which will pay operating costs and return a fair return on the value of the property used and useful in the public service. The itemized estimate of expenditures for the system amount to approximately $9096 per year. These estimates do not appear to be unreasonable. This does not include depreciation, estimated at 10 per cent, which would amount to $500 per year on $5000 (the value shown on the last annual report and the adjusted sale value of the property). The testimony of Mr. Buck shows that the company could probably be operated for $8000 and Mr. O'Connell testified that it could be operated on a rate of $4 per month or about $7860 per year including toll revenue. None of these figures include any return on the capital invested which, at an arbitrary 5 per cent, would amount to $250 per year on a $5000 value. The present income of the company is about $3360 per year. There is, therefore, no question that the company is operating at a very substantial loss. This fact is further apparent when we remember that Mr. Buck acquired the company at sheriff's sale because the company under prior management was unable to meet its obligations.

The company has been operated in the past by the owners of the company or their relatives and no regular salary has been paid for services performed. One witness stated that the estimated expenses were high because the owner would be doing some of the work himself. A utility is entitled to earn its operating expenses. These expenses include, among other things, costs of materials and supplies, costs of labor, and reasonable depreciation. If the owner devotes his time to performing services for the utility he is entitled to receive the usual and reasonable wage for such services. He is not required to donate his time to the patrons of the company.

[6] Mr. O'Connell testified that on a survey as to the possibility of increasing rates it appeared that 50 cents was the maximum monthly increase most patrons would consider fair and that some stated they would discontinue their phones if that increase were applied. He did not, therefore, apply for authority to increase rates.

Speaking in Re Barnes-King Development Co. PUR1925E 200, 202, this Commission said:

"Ordinarily we require any utility contemplating abandonment or suspension of public service to use every

means at its command, including applications for rate increases to this Commission, to remain in function. (In Re Butte Electric R. Co. 13 MUR 88, PUR1920E 760; Public Service Commission v. Valley Mercantile Co. 14 MUR 250, PUR1921D 803; Public Service Commission v. Gordon, 16 MUR 253.) But it would be idle for the Barnes-King Development Company to petition this Commission for a rate which would, on paper, defray its operating costs, depreciation taxes, and a fair return on its investment. Such a rate is not within the zone of practical application and if it were, it would be so high that decreased use of energy would necessarily result and any possible benefit be thus wiped out."

See also Re Eastern Oregon Light & P. Co. (Or 1936) 13 PUR NS 4.

The minimum necessary increase to permit operation of the company would require a rate of at least $4 per month or an increase of 166 per cent over present rates. In order to pay the estimated operating costs, depreciation, and a reasonable return on the capital investment it would require a rate of at least $5 per month or 233 per cent over present rates. Any loss of present patrons would affect the revenue and require even higher rates. There is no evidence that any additional patrons may be anticipated. Under the circumstances any rate that would be sufficient would be impractical.

The rule that a utility cannot be compelled to operate at a loss has been clearly stated by the United States circuit court in Phillips v. Nelson (1939) 34 PUR NS 378, 108 F2d 725, as follows:

"A public utility cannot, in the absence of contract, be compelled to continue to operate its utility at a loss. Ft. Smith Light & Traction Co. v. Bourland, 267 US 330, 333, 69 L ed 631, PUR1925C 604, 45 S Ct 249. The usual permissive charter of a public utility corporation does not give rise to any obligation on the part of the corporation to operate its utility at a loss. Nor can such an obligation be elicited from the acceptance of the charter or from putting the utility into operation. The corporation, although devoting its property to the use of the public, does not do so irrevocably or absolutely, but on condition that the public shall supply sufficient traffic on reasonable rate basis to yield a fair return, and if at any time it develops with reasonable certainty that future operations must be at a loss, the corporation may surrender its franchise, discontinue operation, and dismantle and sell its physical properties. To compel it to go on at a loss or give up the salvage value of its physical properties would be to take its property without the just compensation guaranteed it by the due process clause of the Fourteenth Amendment, USCA Const. Railroad Commission v. Eastern Texas R. Co. 264 US 79, 68 L ed 569, PUR1924C 407, 44 S Ct 247; Brooks-Scanlon Co. v. Louisiana R. Commission, 251 US 396, 399, 64 L ed 323, PUR1920C 579, 40 S Ct 183; Bullock v. Florida ex rel. Railroad Commission, 254 US 513, 520, 521, 65 L ed 380, PUR 1921B 507, 41 S Ct 193."

See also Helena v. Helena Light & R. Co. *supra;* Re Billings Gas Co. *supra;* Re Barnes-King Development Co. *supra.*

The company does not have any franchise. The abandonment of serv-

ice leaves the territory open to any one wishing to undertake the venture. The company is not attempting to enjoy any benefit from its status of a utility. It has abandoned all rights because it cannot operate except at an increasing loss. Under such circumstances it would be permitted to discontinue service.

See Re Barnes-King Development Co. *supra;* Washington v. Washington & C. V. Teleph. Co. (NH 1940) 36 PUR NS 190.

There is no question but that telephone service in the community is desirable. For the reasons stated it is not proper to order either Mr. and Mrs. O'Connell or Mr. and Mrs. Buck to continue to render service at a loss. It may be that the community can interest others in rendering service on some satisfactory basis.

[7, 8] This hearing did not involve investigation into the accounts of the patrons. The Commission is without authority to enforce an order either to compel payment of accounts owed the utility or refunds due the patrons. Adjustments of these accounts will have to be settled between the parties in the ordinary course.

From the evidence and for the reasons stated the Commission makes the following

Findings of Fact

1. That Mr. and Mrs. Georg O'Connell were operating the Ea SideTelephone Co. under a contra for sale from January 3, 1948, to Au gust 28, 1948. That on August 2 1948, the property was relinquished t Mr. and Mrs. Philip Buck, owners o such company, who have had full con trol since that date.

2. That service was abandoned b George O'Connell on August 28, 194 and has not been resumed since tha date.

3. That the East Side Telephon Company has not received sufficien revenue to pay the operating expense of the company and its operation ha resulted in loss to the operators.

4. That the future operation of the East Side Telephone Co., by either Mr. and Mrs. Philip Buck or Mr. and Mrs. George O'Connell, would result in a continued loss from such operation.

The Board concludes as a matter of law that neither Mr. and Mrs. George O'Connell or Mr. and Mrs. Philip Buck as the East Side Telephone Co., should be required to resume the furnishing of service and the proceeding should be dismissed.

WISCONSIN PUBLIC SERVICE COMMISSION

Re City of Waukesha

CA-2743
January 15, 1949

APPLICATION *by municipal water utility for authority to construct wells and main extensions; limited approval granted.*

Municipal plants, § 21 — Authorization for construction — Future plans.

1. The Commission will not authorize construction projects of a municipal plant which will not be started for a number of years, since economic conditions will not permit proper cost estimates to be made for long periods in advance, p. 95.

Municipal plants, § 21 — Authorization for construction.

2. The Commission will authorize the construction of wells and additions to mains by a municipal water plant where the construction appears to be necessary and will be commenced in the near future, p. 96.

By the COMMISSION: The city of Waukesha, Waukesha county, as a water public utility, filed an application with the Commission on November 23, 1948, for authority under § 196.49, Statutes, and general order 2–U–637 to construct numerous main extensions and two wells in accordance with a 15-year waterworks improvement program.

APPEARANCES: A. P. Kuranz, Manager, and P. A. Reynolds, Auditor and Rate Specialist, for the city of Waukesha Water Utility; W. A. Kuehlthau, engineering department, of the Commission staff.

[1] The city of Waukesha engaged engineers to make a survey of its waterworks system and to suggest a long-term improvement program. The program is intended to provide a main and well system which will provide adequate domestic and fire protection service based on estimated requirements fifteen years in the future. The main improvement program contemplates the laying of 52,500 feet of 6-inch, 8-inch, and 12-inch cast-iron water main at a cost of $373,000. These extensions essentially will complete a ring of large-size mains serving the city.

Two new wells, each with a capacity of 1,000 g.p.m. are necessary to supplement the present four wells by the end of the program period. One is expected to be constructed by the end of 1950 and the other about 1958. The cost of the wells will be $100,000 each and will include the well, pump equipment, surface reservoir, controls, building, and necessary associated equipment.

It is not the Commission's policy to authorize construction projects which will not be started for a number

of years. In a period of fifteen years changes may be desired or necessary, thus requiring that amending authorizations be granted. Economic conditions will not permit proper cost estimates to be made for long periods in advance. The delay incident to obtaining authorization when the city desires to proceed with later parts of the program is not significant and authority will be granted readily if the necessity exists.

[2] The city stated that it proposes to construct 5,000 feet of 12-inch main and 1,000 feet of 6-inch main during the next two years at an estimated cost of $60,000. One well also will be constructed in this period at an estimated cost of $100,000. This construction appears necessary and will be authorized. Application for other construction should be made when the city is ready to proceed.

The Commission finds:

1. That public convenience and necessity require the construction of 5,000 feet of 12-inch main and 1,000 feet of 6-inch main and a well and pumping station with capacity of 1,000 g.p.m.

2. That such proposed construction meets the requirements of § 196.49, Statutes.

It is certified:

That the city of Waukesha, as a water public utility, be and hereby is authorized to construct 5,000 feet of 12-inch main and 1,000 feet of 6-inch main and a well and pumping station with capacity of 1,000 g.p.m. at a total cost of $160,000 upon the following conditions:

a. That this certificate be valid only if construction is actually started within one year from the date hereof.

b. That approval of the state board of health be obtained for all plans and specifications.

c. That the applicant notify and obtain approval from this Commission before proceeding with any major change in design, location, size, or cost of the proposed construction and installation.

ORDER

It is *ordered:*

1. That when contracts are let the applicant submit to the Commission a copy of the bids accepted.

2. That upon completion of the project the applicant report to the Commission the actual cost of the installation.

3. That jurisdiction be retained to amend the certificate as above set forth.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Duquesne Light Co. Plans $28,000,000 Power Plant

DUQUESNE LIGHT COMPANY plans to construct a $28,000,000 power plant at Elrama, Pennsylvania, on the Monongahela river.

The plant will contain two 95,000-kilowatt steam turbine generators. The first unit is scheduled for completion in January, 1952, and the second in May, 1952. Installation of these generators will raise the system's capacity to 992,700 kilowatts.

The new station will raise the total cost of the company's postwar expansion program to approximately $112,000,000.

Dry Type Distribution Transformers

A DRY type distribution transformer, type ACO, which has air as its only cooling medium is announced by Marcus Transformer Company, Hillside, New Jersey. No inflammable oil or toxic liquids are present. The entire transformer element is seal protected against oil, acids, moisture, etc., and is housed in a sturdy, scientifically ventilated, weatherproof case. According to the manufacturer, these features conform with all applicable EEI-NEMA construction standards.

This extremely versatile transformer can be used outdoors, pole or platform mounted or indoors at the load center. It is currently available in sizes to 100 KVA, voltages to 5000 V.

Cochrane Acquires Liquid Conditioning Corporation

COCHRANE CORPORATION, Philadelphia, manufacturers of water conditioning equipment and steam specialties, announces the acquisition of substantially all of the capital stock of Liquid Conditioning Corporation, of Linden, New Jersey, which manufactures a complete line of equipment for the conditioning of water and other liquids, under the trade name, "Liquon." Hereafter, Liquid Conditioning Corporation will operate as a wholly owned subsidiary of Cochrane Corporation, the products of the former continuing to be marketed under the trade name, "Liquon."

According to T. E. McBride, president of Cochrane, the engineering, sales, and technical staffs of the two corporations will augment each other. S. B. Applebaum, one of the organizers and an officer of Liquid Conditioning Corporation, and nationally known as an authority in the field of water conditioning, will be in charge of the cold water conditioning activities of both organizations, as well as the conditioning of liquids other than water. "Liquon" district sales offices are combining operations with existing Cochrane sales offices, thus further strengthening the field organizations of both corporations.

Foster Wheeler Announces New Appointments

VICE ADMIRAL Earle W. Mills, USN (Ret.), has been elected executive vice president and a director of Foster Wheeler Corporation, and David McCulloch, formerly executive vice president, has been named vice chairman of the board, it was announced recently by Harry S. Brown, president and chairman.

Pennsylvania Pwr. & Lt. Plans $30,500,000 Program for 1949

CHARLES E. OAKES, president of the Pennsylvania Power and Light Company, has announced a $30,500,000 construction budget for 1949. From 1945 through 1949, the company will have spent about $100,000,000 in expanding and reinforcing its facilities, according to Mr. Oakes.

An important feature of the new Exide-Manchex Battery is the famous manchester positive plate with its unique lead button construction. The buttons, rolled strips of corrugated lead, are pressed into holes of the lead-antimony grid. Forming action expands the buttons and locks them securely in place. Only a comparatively small portion of the total lead is formed initially into active material . . . the remainder is available for gradual conversion in service.

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For example, every Dodge truck has one of seven *"Job-Rated"* truck engines. It is a high-compression engine of advance design . . . which insures maximum efficiency, with "top" economy.

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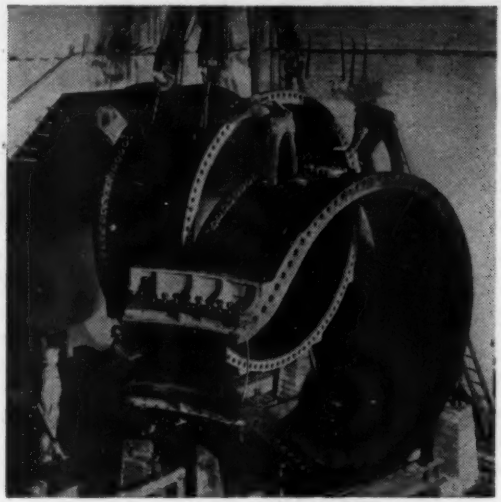

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Each generator was driven by a 150,000 horsepower hydraulic turbine built by Newport News.

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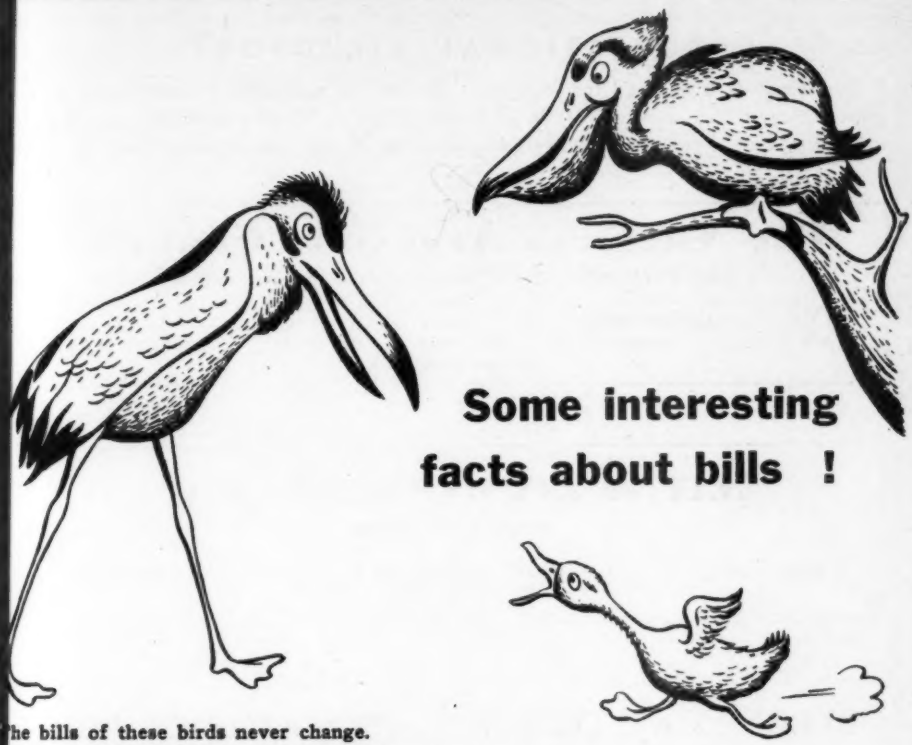

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The peculiar bird's bill at the left is long and thin. The duck's bill is *always* sort of flat. The pelican's bill *always* has a pouch attached.

Each species retains the *same* distinctive bill *—year after year.*

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PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction. » »

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Simply compute the load and order the proper size Grinnell Pre-Engineered Spring Hanger as indicated in the Capacity Table appearing in descriptive catalog. 14 sizes with load range from 84 lbs. to 4,700 lbs.

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Guides prevent contact of coils with casing wall or hanger rod and assure continuous alignment and concentric loading of spring.

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Precompression* assures operation of spring within its proper working range where variation in supporting force is at a minimum.

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